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# Breakthrough or Breakpoint? Global Perspectives on the Nuclear Ban Treaty

GLOBAL SECURITY  
SPECIAL REPORT

Editors:

Shatabhisha Shetty & Denitsa Raynova

December 2017

## About the Editors

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The European Leadership Network (ELN) works to advance the idea of a cooperative and cohesive Europe and to develop collaborative European capacity to address the pressing foreign, defence and security policy challenges of our time. It does this through its active network of former and emerging European political, military, and diplomatic leaders, through its high-quality research, publications and events, and through its institutional partnerships across Europe, North America, Latin America and the Asia-Pacific region.



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# Breakthrough or Breakpoint?

## Perspectives on the Nuclear Ban Treaty

**Shatabhisha Shetty & Denitsa Raynova**

The Treaty on the Prohibition of Nuclear Weapons (TPNW) is a landmark international agreement prohibiting a range of nuclear weapon-related activities, including acquiring, manufacturing, developing, testing, possessing and stockpiling nuclear weapons, threatening to use these weapons, or allowing any nuclear arms to be stationed on the territory of states party to the treaty. Its origins lie in the initiative on the humanitarian consequences of nuclear weapons, the UN General Assembly agreed by a majority in 2016 to begin negotiations on a treaty banning nuclear weapons. The negotiations concluded in July 2017 with 122 states voting to adopt the treaty. On 20 September 2017, the world's first legally binding treaty banning nuclear weapons opened for signature. By the end of November 2017, three countries had ratified and 53 countries had signed the treaty. After 50 ratifications, this landmark treaty will enter into force.

Proponents hail the treaty as historic, designed to stigmatise and delegitimise nuclear weapons possession and use. They maintain that it will establish a new norm akin to the ban on landmines, cluster munitions and chemical weapons. Frustrated and angry at the slow pace of disarmament by the nuclear weapon states, supporters believe that the treaty closes a "legal gap" for the prohibition and elimination of nuclear weapons and finally establishes a pathway for the elimination of nuclear weapons, complementing the efforts of existing disarmament frameworks such as the Nuclear Non-Proliferation Treaty (NPT).

Yet the treaty also faces fierce opposition. All nine nuclear-armed states - the U.S., Russia, the United

Kingdom, China, France, India, Pakistan, North Korea, and Israel – boycotted the UN negotiations and the July 2017 vote. The United States, France, and the United Kingdom issued a joint statement immediately after the treaty was adopted, declaring they "do not intend to sign, ratify or ever become party to it". No states dependent on nuclear extended deterrence guarantees such as NATO members or countries such as Australia, Japan and South Korea have endorsed the treaty. Opponents argue that the treaty neither addresses existing international security challenges, nor does it alter the conditions that make nuclear deterrence necessary. Rather, they contend that it will detract from other disarmament efforts and undermine the NPT, the cornerstone of the global non-proliferation and disarmament regime.

Entry into force of the treaty is likely as is continuous opposition from its detractors. As such, we are facing a deeply divided international community. To examine the ban treaty's implications for the global nuclear order, the following collection of essays brings together contributions from international nuclear policy and arms control experts. They present current national and institutional attitudes towards the ban treaty and assess whether these are likely to change over time. The authors identify the challenges and opportunities for building bridges between proponents and opponents of the treaty in the months and years ahead.

In the opening chapter, **Daryl G. Kimball** analyses the United States' position towards the ban treaty and argues that the hostile rhetoric that Washington has used so far deepens the divide between the world's nine nuclear-armed actors and the non-nuclear weapon majority of states. The U.S. sees the ban treaty as competing with existing disarmament initiatives and failing to offer a credible alternative to deterrence. By

revisiting the language and logic of the ban movement, Kimball identifies the shortcomings of this rationale. He underscores the need for quiet diplomacy among the nuclear-armed states, and offers six pragmatic steps for bridging the rift between supporters and sceptics. Most importantly, he highlights the need for the United States and others to consider the legitimate concerns of non-nuclear weapon states and demonstrate willingness to engage with them.

In the next chapter, **Dr Nikolai Sokov** sets out the Russian perspective on the ban treaty. He highlights the similarities between Russian and American objections to the treaty, noting that the two states share a common belief that disarmament can only be achieved through the gradual reduction of nuclear arms. Dr Sokov stresses that Russia considers the ban treaty to be an unrealistic path to disarmament. He adds that the widespread and popular consensus inside Russia over the need to preserve nuclear weapons suggests that current Russian policy will not change in the foreseeable future.

Setting out the position of European nuclear weapon states, **Paul Schulte** offers his assessment of the United Kingdom and France. He highlights the similarities between the two countries in their understanding and rejection of the ban treaty. While both governments have repeatedly raised objections to the treaty, they have also reaffirmed their desire for reducing global nuclear stockpiles. In this context, Professor Schulte argues that the UK and France should conduct discreet soundings with moderate states and organisations supporting the ban treaty in advance of the 2018 UN High Level Conference on Nuclear Disarmament and the 2020 NPT Review Conference.

To complete the view from all the P5 Nuclear Weapon States, the next chapter deals with China. **Raymond Wang & Tong Zhao** argue that, as a nuclear weapon state and an emerging global power, China can and should take steps to respond constructively to the ban treaty and help mitigate the growing international divide. Zhao and Wang see the months ahead as an opportunity to align China's policy with some of

the core principles within the treaty. They present the case for China to remain as a non-State Party but still engage substantively with supporters of the ban movement. In their assessment, engaging proactively with non-nuclear weapons states is the necessary step to preserve the international consensus on disarmament. They see it as a way of strengthening nuclear security and as an avenue through which China can strengthen its global leadership.

In the following chapter, **Dr Hirofumi Tosaki** presents the perspective of a "nuclear umbrella" state, focusing on Japan. Dr Tosaki argues that in Japan's view, the ban would neither solve, nor contribute to resolving current security challenges in the Asia-Pacific region. Japan views the treaty as destabilising by negatively affecting its national security. He points out that an effective prohibition of nuclear weapons would require a fundamental change of perception on the role of such weapons and the conditions for such a change have worsened. Dr Tosaki also notes Japan's interest in revitalising the Non-Proliferation Treaty review process and readiness to support the Non-Proliferation and Disarmament Initiative (NPDI) as a way of closing the gap between the two opposing camps.

In considering the implications of the ban treaty for NATO member states, **Emil Dall** describes the difficult balancing act faced by some Allies and NATO partners. He argues that the treaty cannot be ignored by the Alliance for two reasons. The first is domestic support for nuclear disarmament by a number of NATO countries that make initiatives such as the ban treaty attractive. Norway and the Netherlands, for instance, have prominent disarmament constituencies and have previously led on other disarmament initiatives. The second, and perhaps more urgent reason, is the Alliance's partnerships with non-NATO states that are strong supporters of the treaty, yet maintain close defence and security cooperation with NATO. To avoid divisions between key stakeholders in the Alliance and partners in its immediate neighbourhood, Dall recommends constructive dialogue on mutual defence short of nuclear weapons, a commitment to close non-NATO member partners who may consider



signing the treaty, and continuation of work on joint disarmament initiatives.

In Chapter 7 of the collection, **Dr Nick Ritchie** presents the ban treaty proponents' view, arguing that the treaty attempts to delegitimise and diminish nuclear weapons as a currency of power in global politics. He contends that disarmament diplomacy has shifted from trying to change the policies of the countries that possess nuclear weapons to changing the global legal normative environment in which they are embedded, by challenging the acceptability of nuclear weapons. Dr Ritchie argues that the treaty does not undermine other disarmament initiatives that impose physical constraints (on stockpiles, testing, fissile material production, deployments). Instead, it complements them by setting a prohibitive agenda designed to influence declaratory policy, use, and possession. Thus, the purpose of the ban treaty is to challenge the acceptability of nuclear violence, to create a 'crisis of legitimacy' of current defence postures, precipitating a transformation of nuclear policies and practices.

**Dr Matthew Harries** assesses the implications for US extended nuclear deterrence arrangements of a future disarmament and non-proliferation architecture which will include the ban treaty. In his analysis, Dr Harries sees the uncompromising advocacy of the pro-ban movement as destabilising to the moderate stance of countries reliant on the United States' nuclear umbrella. Although there are different perspectives, ranging from supportive views of disarmament to clear opposition, the ban discourse may paradoxically consolidate support for nuclear deterrence. Yet, ban treaty supporters should not be dismissed in countries that benefit from the US security guarantee. Dr Harries argues that umbrella states are well-positioned to engage more deeply in exploring the conditions for serious nuclear disarmament. For example, they could support research on exploring strategic stability at low numbers of nuclear weapons and thus work towards a nuclear-weapon-free world.

In the final chapter, **Andrea Berger** outlines five recommendations for strengthening the Non-

Proliferation Treaty (NPT) as the consensus-based tool for working towards a nuclear weapons-free world. She makes the case that supporters and opponents of the ban should find a mutually agreeable way to advance NPT-focused initiatives, arguing that both sides should accept a political reality in which the ban exists, despite the fact that it creates stark divisions in the international system. She proposes that opponents should adopt a more moderate tone and posture. Berger further emphasises the importance of the P5 Process and the Non-Proliferation and Disarmament Initiative (NPDI) as additional credible drivers of disarmament, as well as the need for creative initiatives related to arms control and disarmament such as the International Partnership for Nuclear Disarmament Verification (IPNDV), which engage both ban supporters and critics. Crucially, she suggests that the 2020 NPT Review Conference should be used to mitigate some of the potential longer-term effects of a ban, addressing and calming down the current tensions.

By offering a range of expert analyses on the different perspectives about the ban treaty, our aim is to encourage a better understanding of the underlying motives and objectives of the treaty, the humanitarian impacts movement and the rationale of those who are cautious or hostile. By exposing the most contentious aspects of the debate this approach offers a means of identifying opportunities and initiatives to reconcile the different approaches to nuclear disarmament and unite the international community around a practical, future-oriented programme of action that could lead to the reduction and ultimately the elimination of nuclear arsenals.



“...the treaty can, over time, help to further delegitimize nuclear weapons and strengthen the legal and political norm against their use.”

**Daryl G. Kimball**

# The United States and the Nuclear Ban Treaty

**Daryl G. Kimball**

In her remarks before an emergency UN Security Council briefing on 4 September 2017 following North Korea's sixth and largest nuclear test explosion, U.S. Ambassador Nikki Haley lectured Pyongyang's leaders that "... being a nuclear power is not about using those terrible weapons to threaten others. Nuclear powers understand their responsibilities."

Indeed, all states parties to the 1968 Nuclear Non-Proliferation Treaty (NPT), nuclear-armed and non-nuclear alike have obligations and responsibilities under the NPT and other key nuclear arms control, non-proliferation, and disarmament arrangements. This includes the obligation, set forth in Article VI of the NPT for the nuclear-armed states and other NPT parties, to "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament...."<sup>1</sup>

Despite North Korea's increasingly dangerous drive to develop and test a more advanced missiles and warheads in defiance of the NPT, the non-proliferation regime though imperfect, has been a success. The NPT and the broader nuclear non-proliferation and disarmament enterprise, which includes the 1996 Comprehensive Nuclear Test Ban Treaty (CTBT), have slowed the spread of nuclear weapons and technology, prompted the two largest nuclear powers, the United States and Russia, to slash their arsenals, brought about a halt to all nuclear testing by all but one state, and created an informal taboo against nuclear weapons use.

But today, progress on nuclear disarmament is stalled, key NPT-related disarmament responsibilities and obligations are going unmet and tensions are growing between major nuclear-actors.

The push to negotiate and sign the new Treaty on the Prohibition of Nuclear Weapons (TPNW) is a powerful and constructive response from the world's non-nuclear weapon state majority to the growing risks posed by nuclear weapons and the growing frustration with the failure of the nuclear-armed states to fulfil their NPT-nuclear disarmament responsibilities and commitments.

The initiative, which has involved more than 130 states and a worldwide civil society movement led by the Nobel Peace Prize-winning the International Campaign to Abolish Nuclear Weapons, is a good faith effort to act on their responsibilities as NPT member states to pursue effective measures on disarmament and help end the arms race. The TPNW further reinforces the commitments of these states against the use, threat of use, development, production, manufacture, acquisition, possession, stockpiling, transfer, stationing, or installation of nuclear weapons.

While the new TPNW will not, by itself, immediately eliminate any nuclear weapons, *the treaty can, over time, help to further delegitimize nuclear weapons and strengthen the legal and political norm against their use.* Steps aimed at reducing the risk of catastrophic nuclear weapons use are necessary and should be welcomed.

Unfortunately, the United States and the world's other major nuclear weapons actors have responded by boycotting the negotiations and strongly criticizing the effort as "a distraction" that undermines more effective nuclear disarmament and non-proliferation measures.

In comments to *Arms Control Today* following the conclusion of UN negotiations on the TPNW in July, Chris Ford, special assistant to the

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<sup>1</sup> United Nations, THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS (NPT), 1970, Available here: <http://www.un.org/en/conf/npt/2005/npptreaty.html>

President and senior director for weapons of mass destruction and counter-proliferation on the U.S. National Security Council said the TPNW is “ineffective at best and may in fact be deeply counterproductive.”

Ford said the United States government hopes “...that the more thoughtful of its supporters will join us in seeking genuinely effective measures related to ending nuclear arms races and fulfilling the objectives of the NPT.”

However, not only is the critique levelled against the TPNW by U.S. officials flawed, but their promises of support for effective measures to end the arms race ring hollow in the absence of any clearly articulated strategy or initiative designed to do so. Worse yet, President Trump’s own statements about “expanding” the scale and scope of the already excessively large U.S. nuclear arsenal severely undermine the credibility of promises from senior U.S. officials about U.S. support for nuclear restraint and disarmament.

Since arriving in office, the new administration has pledged to increase U.S. spending to replace and upgrade U.S. strategic nuclear weapons delivery systems that would sustain force levels that are one-third larger (approximately 1,800 deployed warheads) than the Pentagon determined in 2013 are necessary for deterrence requirements.<sup>2</sup>

President Trump reportedly sharply criticized the 2010 New START agreement with Russia, and the administration has not yet responded to Russian proposals to extend it another five years beyond its scheduled 2021 expiration date. Prospects for future arms control arrangements are dim so long as the lingering dispute between Washington and Moscow over Russia’s reported testing and deployment of ground-based cruise missiles in violation of the 1987 Intermediate-Nuclear Forces (INF) Treaty continues. Later this

2 Department of Defence, Report on Nuclear Employment Strategy of the United States Specified in Section 491 of 10 U.S.C., 2012, Available here: <https://www.globalsecurity.org/wmd/library/policy/dod/us-nuclear-employment-strategy.pdf>

year the Pentagon will complete a review of U.S. nuclear weapons policy. A report in POLITICO on 9 September 2017 suggested that one recommendation will be to develop new types of “more usable” nuclear weapons to deter, and if necessary, wage war against Russia.<sup>3</sup>

Instead of further deepening the growing divide between the world’s nine nuclear-armed actors and the non-nuclear weapon state majority by aggressively criticizing the nuclear ban treaty, U.S. officials should consider using more conciliatory language and tactics that help build bridges. Even more importantly, the new Trump administration must itself focus on advancing concrete measures that would reduce the role and number of nuclear weapons and help them meet their own NPT-related disarmament responsibilities.

### ***A flawed US critique that misses the point***

So far, Trump administration officials have maintained an aggressively critical stance toward the TPNW and its state supporters. This will likely foster further resentment by key partners in the global nuclear non-proliferation and disarmament enterprise. The NSC’s Ford told a Carnegie Endowment for International Peace Roundtable on 22 August 2017 that the new nuclear ban treaty will “make the world a more dangerous and unstable place by seeking to delegitimize the ‘extended deterrence’ alliance relationships that the United States has with its allies.”<sup>4</sup>

3 POLITICO, Trump review leans toward proposing mini-nuke, 2017, Available here: <http://www.politico.com/story/2017/09/09/trump-reviews-mini-nuke-242513>

4 Carnegie Endowment for International Peace, Briefing on Nuclear Ban Treaty by NSC Senior Director Christopher Ford, 2017, Available here: <http://carnegieendowment.org/2017/08/22/briefing-on-nuclear-ban-treaty-by-nsc-senior-director-christopher-ford-event-5675>

That argument, however, not only conflates nuclear deterrence with conventional deterrence, but erroneously suggests that participation by certain NATO countries in nuclear war planning and others in the stationing of U.S. nuclear weapons (prohibited by the TPNW) is necessary to prevent them from pursuing their own nuclear arsenals. In reality, by perpetuating outdated deployments of tactical nuclear weapons in Europe, U.S. and NATO leaders provide no meaningful additional military capability for the alliance and they create a justification for Russia to maintain its own residual stockpile of short-range nuclear attack systems—all of which makes the continued deployment of these weapons in the name of “extended deterrence” an impediment to disarmament.

Although the main thrust of the TPNW was, by design, to negotiate a treaty to prohibit nuclear weapons possession, development, and use, rather than a comprehensive convention for the complete elimination of all nuclear weapons, U.S. officials such as Ford have criticized the TPNW for not constructing a detailed framework for nuclear weapons elimination.

U.S. officials also criticize the TPNW for its anodyne safeguards provisions. Ideally, the provisions in Article 3 for safeguards against nuclear weapons programs would have included a specific requirement for more rigorous inspection procedures under the terms of the Additional Protocol or even stronger measures. But it should be no surprise to any experienced diplomat that, in a negotiation involving almost exclusively non-nuclear weapon states, most would resist taking on new legally-binding safeguards obligations if doing so did not help them secure stronger commitments from nuclear weapon states for disarmament. Such matters have been and will continue to be debated within the context of the NPT review process.

Another common U.S. complaint about the TPNW, repeated by Ford, is that it will “harm the effective operation of the global non-proliferation regime by increasingly entangling and preoccupying states ...in contentious debates and disputes over disarmament policy, making it harder for them

to do the job the international community needs them to do in preventing nuclear proliferation.” But such a conversation does not harm or distract from the work of the NPT or the Conference on Disarmament because serious discussion on disarmament, as well as non-proliferation, is the business of those entities.

U.S. officials, including Ford, also worry that the TPNW will create “a competitor” regime to the NPT ...and perhaps entice defections from the NPT. There certainly is no substitute for the NPT and defections would be disastrous. But the evidence does not support such fears coming to pass. A review of the record of the TPNW talks, and a look at the treaty itself, show clearly that the states that negotiated and will sign the prohibition treaty remain strongly supportive of the NPT even if they are disappointed with record of implementation on disarmament and non-proliferation by certain states. If anything, the process leading up the conclusion of the prohibition treaty has deepened their commitment to non-proliferation and disarmament and the pursuit of a world free of nuclear weapons.

### *A program for action*

Negotiations on a ban on nuclear weapons development, possession, and use are not a substitute for necessary, progressive steps on nuclear disarmament and non-proliferation.

With the TPNW now a reality, its supporters, sceptics, and opponents must put aside their disagreements about the new agreement and find new and creative ways to come together to strengthen the nuclear disarmament and non-proliferation regime.

Rather than foster resentment by actively lobbying states not to sign the treaty, Trump administration officials and their successors should take the high road. They could simply say that, “at this time, given the global security environment, we cannot join the prohibition treaty, but we respect the intentions of those who have pursued it.”

Most importantly, Washington must also put its nuclear weapons policy house in order. To do so, the understaffed and overstretched Trump

administration should get behind a modest but important program of action designed to maintain and reinforce existing nuclear arms control and non-proliferation measures, while pursuing new options to ease the growing tensions between nuclear-armed states and open the way to more substantial disarmament steps down the road.

To move forward, the United States will need a little help and quiet diplomatic pressure from its friends: the other NPT nuclear-armed states and the U.S. allies who stood aside from the prohibition treaty negotiations.

Failure to do so may not only undermine long-term support and confidence in the United States leadership role, but the NPT itself. At a minimum, this program for action might include the following elements:

*"To move forward, the United States will need a little help and quiet diplomatic pressure from its friends..."*

**Implement the Iran deal.** To start, the Trump administration should commit to implement rather than undermine the 2015 agreement between Iran and six world powers that verifiably limits Iran's weapons-relevant nuclear activities. The Iran deal is working and cannot be "renegotiated." If Trump or the U.S. Congress take actions that unravel the agreement, it would create the conditions for a spiral of proliferation in the region and would undermine the NPT.

**Pursue Diplomacy with North Korea.** The Trump team must also refrain from bombastic threats against North Korea in response to its nuclear and missile tests and work with allies to better implement existing UN sanctions against Pyongyang, and actively pursue talks with North Korea to ease tensions, avoid miscommunication in a crisis. The U.S., in coordination with China and South Korea, should follow-up by proposing a framework for sustained negotiations designed to halt and reverse that country's dangerous nuclear

pursuits and to establish a peace regime on the peninsula.

**Sober language on nuclear dangers.** President Trump has quickly developed a reputation as an impulsive, ill-informed commander-in-chief, who too easily threatens nuclear "fire and fury" against potential adversaries. Russia has also engaged in reckless nuclear sabre-rattling. When Presidents Trump and Putin meet next, the two leaders could reduce worries about nuclear missteps by reaffirming the 1985 statement by U.S. President Ronald Reagan and Soviet leader Mikhail Gorbachev that "a nuclear war cannot be won and must never be fought."

**Extend New START and seek deeper cuts.** As President Barack Obama noted in his final press conference, "[T]here remains a lot of room for both countries to reduce our nuclear stockpiles." With up to 1,550 deployed strategic nuclear weapons allowed under New START, Russia and the United States can safely cut their bloated nuclear stockpiles further without negotiating a new treaty.

By agreeing to extend New START and its verification provisions by five years, to 2026, Trump and Putin could confidently pursue further, significant parallel reductions of warhead and delivery system inventories by one-third or more and still meet their respective nuclear deterrence requirements. This step would ease tensions and reduce fears of a new nuclear arms race, plus it would reduce the skyrocketing price of nuclear weapons. Without a decision to extend New START before its scheduled expiration date of February 2021, there would be no limits on the world's two largest nuclear arsenals for the first time since the early-1970s, and the credibility of the U.S. and Russian commitment to pursue effective measures on nuclear arms control and disarmament would be in tatters.

**Address INF Treaty violations.** Russia's deployment of ground-based cruise missiles prohibited by the landmark INF Treaty is a serious matter. However, Russia's missile deployments do not yet significantly alter the military balance and the Trump administration should reject Congressional pressure to respond in-kind by



pursuing a new nuclear weapon system. Instead, the two sides should agree to discuss compliance concerns at another meeting of the treaty's Special Verification Commission and to work to resolve all outstanding compliance issues.

If Moscow continues to deploy the banned ground-launched cruise missiles, U.S. and NATO leaders should insist that the weapons would need to be counted under the limits set in the next round of nuclear arms reductions. Washington should also continue to support ongoing NATO efforts to bolster the conventional defences of those allies that would be potential targets of Russian aggression or intimidation.

**Reaffirm the Commitment to the CTBT.** For more than two decades, the United States has led global efforts to verifiably halt nuclear testing — an activity that is not necessary for maintaining the U.S. nuclear arsenal but that can be used to advance other states' nuclear weapons capabilities and that fuels nuclear proliferation. As U.S. Secretary of State Rex Tillerson wrote in his responses to questions from his January 2017 confirmation hearing, "I think the [nuclear test] moratorium has served us well."

The United States and China have signed but not yet ratified the 1996 Comprehensive Test Ban Treaty (CTBT). Six other CTBT "hold-out" states must also ratify to trigger its formal entry into force, but U.S. leadership is essential. Explicit and clear support from Washington for the CTBT is even more important in the wake of North Korea's 6<sup>th</sup> and by far its largest nuclear test explosion on 3 September 2017.

The Trump administration should be pressed to reaffirm its obligation not to conduct nuclear test explosions and to review whether and when to pursue of Senate approval for U.S. ratification. In the meantime, states that have conducted nuclear test explosions in the past, including the United States and China, as well as other leading CTBT states parties and TPNW signatories, should reaffirm their support for a permanent, verifiable end to nuclear test explosions through a joint heads of state declaration on the occasion of the 50<sup>th</sup> anniversary of the negotiation of the NPT in 2018.

## ***Moving forward***

The Treaty on the Prohibition of Nuclear Weapons is here. Contrary to hype, it is not a "distraction," nor will it undermine the NPT— so long as ban treaty advocates recognize its value and its limitations and so long as the nuclear weapon states do not continue to suggest that the ban treaty is the source of the nuclear non-proliferation regime's problems.

In reality, the stresses and strains on the NPT are due to the actions of North Korea, the inability of the major nuclear armed states to make progress on disarmament commitments, the technological arms race by the nuclear weapon states, and the failure of key states in the Middle East to agree on the agenda for a conference on a weapons of mass destruction-free zone in their region.

To strengthen the nuclear non-proliferation and disarmament enterprise, prohibition treaty supporters, sceptics, and opponents must put aside their disagreements about the new agreement and find new and creative ways to come together to strengthen the nuclear disarmament and non-proliferation regime.



“Russia’s reaction to the signing of the ban treaty has been unequivocally negative... Nuclear weapons are considered critical to Russia’s security and influence.”

**Nikolai Sokov**

# Russia and the Nuclear Ban Treaty

## Dr Nikolai Sokov

Russia's reaction to the signing of the Treaty on the Prohibition of Nuclear Weapons (TPNW) has been unequivocally negative. It matches the reaction of other four nuclear weapon states (NWS) who claim that implementation of Article VI of the Nuclear Nonproliferation Treaty (NPT) is proceeding at a reasonable pace and in good faith. They all argue that "fast-tracked" nuclear disarmament could undermine international security rather than strengthen it. Yet the Russian attitude is different to that of the other NWS in a number of ways. Examining these differences provides important insights into Moscow's perspective on nuclear disarmament, international security, and other aspects of its foreign policy.

### *Role of nuclear weapons in Russian security policy*

Nuclear weapons are considered critical to Russia's security and influence. Moscow believes that it simply cannot afford to lose them in the existing and the foreseeable international environment. This attitude was clearly expressed in Russia's first detailed and comprehensive statement on the TPNW presented by Mikhail Ulyanov, the director of the Nonproliferation and Arms Control Department of the Russian Foreign Ministry. Ulyanov emphasized that "nuclear weapons are, objectively, one of the elements that hold together international security... If, all of a sudden, that element is removed, the entire structure of international security could be, at a minimum, shaken with unpredictable consequences."<sup>1</sup> Several weeks later Russian Foreign Minister Sergey Lavrov declared at the Moscow Nonproliferation Conference that the

nuclear ban treaty "ignores the need in accounting for all factors that affect strategic stability... As a result, the world may become even less stable and predictable." He explained that the proponents of the TPNW chose to ignore the "new deadly and efficient types of weapons that have appeared since the signing of the NPT."<sup>2</sup>

The Russian attitude toward prohibition treaty is grounded in the belief that the entire system of international law and varying international security regimes has weakened over the last 15-20 years. The major turning point was in 1999 when NATO used force against Serbia without the authorization of the UN Security Council (UNSC). Moscow saw that as signalling that its privileged position and its right of veto in the UNSC had only limited value. As such military balance acquired greater importance and military power was considered the only sound foundation for security and influence. The rationale was to balance Moscow's two vastly more powerful neighbours: the United States and NATO in the west and, though never mentioned officially and rarely unofficially, China in the east. In this situation, nuclear weapons are the ultimate, if not the only, security guarantee.

Following the 1999 Kosovo war, Russia adopted a "de-escalation" or "escalate to de-escalate" approach to nuclear weapons i.e. limited first use in response to a large-scale conventional attack. That strategy, a modified version of NATO's

1 "Zapret Yadernogo Oruzhiya Protivorechit Natsionalnym Interesam Rossii" (A Ban on Nuclear Weapons Contradicts National Interests of Russia). Kommersant-Daily, September 12, 2017 (Available here : <https://www.kommersant.ru/doc/3409219?tw>)

2 Vystuplenie i Otvety na Voprosy Ministra Inostrannykh Del Rossiiskoi Federatsii S.V Lavrova na Moskovskoi Konferentsii po Nerasprostraneniyu, 20 oktabrya 2017 goda (Statement and Answers to Questions by the Minister of Foreign Affairs of the Russian Federation S.V Lavrov at the Moscow Nonproliferation Conference, October 20, 2017) The Ministry of Foreign Affairs document 2005-20-10-2017, Available here: [http://www.mid.ru/ru/foreign\\_policy/international\\_safety/disarmament/-/asset\\_publisher/rp0fiUBmANaH/content/id/291375](http://www.mid.ru/ru/foreign_policy/international_safety/disarmament/-/asset_publisher/rp0fiUBmANaH/content/id/291375).

“flexible response” strategy from the 1960s, is intended to deter war under conditions where there is an asymmetry in conventional forces. However Russia does envision reducing its reliance on nuclear weapons. In 2003, the then Minister of Defense, Sergey Ivanov, proclaimed that Russia’s reliance on nuclear weapons would only continue until it succeeded in developing modern conventional capabilities. That statement signalled that Moscow planned to go the way of the United States which, after the end of the Cold War, dramatically reduced its reliance on nuclear weapons and its nuclear arsenal by transferring many military and political missions (which were previously assigned to nuclear weapons) to modern conventional forces. In 2015, Russia demonstrated improvements in its conventional capability by firing long-range sea-launched cruise missiles into Syria. Full capability is still years away and perhaps only achievable by the middle of the next decade. Yet the Chief of the General Staff of the Russian Armed Forces, Valeri Gerasimov, already announced that progress in developing long-range conventional weapons and the prospect of acquiring hypersonic delivery vehicles will enable Russia to reduce its reliance on nuclear weapons in the future.<sup>3</sup> Although reduced reliance on nuclear weapons will be a positive development, this transition will take time and nuclear weapons will still play an important role in Russia’s national security policy.

### *The path toward disarmament*

Russia insists that the rightful path toward the

3 Vystuplenie Nachalnika Generalnogo Shtaba Vooruzhenykh Sil Rossiiskoi Federatsii – Pervogo Zamestitelya Ministra Oborony Rossiiskoi Federatsii Generala Armii Valeriya Gerasimova na Otkrytom Zasedanii Kollegii Minoborony Rossii, 7 noyabrya 2017 g. (Statement by Chief of General Staff of the Armed Forces of the Russian Federation – First Deputy Minister of Defense Army General Valeri Gerasimov at the Open Meeting of the Collegium of the Ministry of Defense, November 7, 2017), Available here: [http://function.mil.ru/news\\_page/country/more.htm?id=12149743@egNews](http://function.mil.ru/news_page/country/more.htm?id=12149743@egNews)

world free of nuclear weapons is through gradual reductions that will eventually reach zero. This is aligned with the United States’ position. A familiar sight at all NPT Review Conferences and Preparatory Committees are American and Russian representatives extolling the virtues of the 2010 New START Treaty as well as additional unilateral reductions. Nevertheless, these achievements look unimpressive in light of the virtual stalemate in bilateral arms control efforts since 2010 which are likely to continue. However, the similarity of American and Russian statements hides fundamental differences in approach. The United States seeks to limit future arms control agreements to nuclear weapons while Russia insists on what it often calls an “integrated approach” which encompasses nuclear weapons, modern long-range conventional weapons, missile defence, and “space weapons” (the latter category has remained under-defined) within a single package. This approach was formulated relatively recently in the testimony of Foreign Minister Sergey Lavrov during the New START ratification hearings in 2011 in the Russian Parliament,<sup>4</sup> although elements have been part of the Russian position for many years. Additionally, the Russian position now includes a requirement that other P5 states join the United States and Russia for the next arms control treaty. In contrast, the United States tends to postpone the multilateralization of arms control until an undefined moment in the future.

Until these differences are reconciled, nuclear reductions and further arms control will remain stalled. It is difficult to see what could influence

4 “Stenogramma Vystupleniya Ministra Inostrannykh Del Rossii S.V. Lavrova na Plenarnom Zasedanii Gosudarstvennoi Dumy Federalnogo Sobraniya Rossiiskoi Federatsii npo Novomy Dogovoru o SNV, Moskva, 14 Yanvarya 2011 goda [Transcript of a Statement by Foreign Minister of the Russian Federation Sergey Lavrov at a Plenary Meeting of the State Duma of the Federal Assembly of the Russian Federation on the New START Treaty, January 14, 2011],” Russian Ministry of Foreign Affairs, January 14, 2011, Available here: <http://www.mfa.ru>.

the United States to broaden its approach or influence Russia to narrow its approach. Russia and the United States both share two important attitudes: they both reject early nuclear disarmament and both would rather continue stalling further bilateral arms control efforts than agree to a compromise with the other. This does not bode well for a change of Russian approach to the TPMW.

### *Opinions outside the government*

Another important feature of the Russian attitude towards the TPNW which sets it apart from the western NWS is the near consensus within Russia. There is no public support within Russia for the ban treaty. There isn't a single reputable nongovernmental organization or a think tank that has espoused even minimal support for it. Governmental control has little if anything to do with that unanimity. The vast majority of nongovernmental experts genuinely adhere to similar views of those of the government and appear to sincerely regard nuclear weapons as central to Russia's security and influence.

*"Russian public opinion can be summarized as 'nuclear weapons are a necessary evil' or 'retain but not use.'"*

Russian public opinion can be summarized as "nuclear weapons are a necessary evil" or "retain but not use." According to recent surveys by two reputable Russian public opinion firms, FOM and VTSIOM, half or more of the Russian public believes that war with the United States and NATO is likely. This aligns closely with official views.<sup>5</sup> At the same time more than 70 percent of

those surveyed by FOM objected to Russia using nuclear weapons first in a conflict, which is not in line with official government policy. 78 percent of those surveyed believed nuclear use would have catastrophic consequences for humankind. Yet support for the early elimination of nuclear weapons is virtually non-existent. In 2000, 76 percent of the Russian public believed that nuclear weapons have a central role in ensuring the security of their country and that figure has increased since then.<sup>6</sup> Even the Russian Orthodox Church openly endorses nuclear deterrence as a necessary and temporary evil until such time when human nature improves.<sup>7</sup> In short, official opposition to TPNW enjoys the support of the Russian public and stronger support from the expert and religious communities. Both suggest that the current policy is unlikely to change in the foreseeable future.

### *Low-key opposition*

The final aspect which sets Russia apart from the other NWS is the curiously restrained reaction to the completion of the ban treaty negotiations, especially compared to the United States, Great Britain, and France, who almost immediately issued a joint statement strongly criticizing the ban treaty. There have been very few Russian official statements about the ban treaty and in most cases these have emphasized what Moscow considers the "correct" approach to nuclear disarmament rather than explicitly criticizing the approach embodied in the ban treaty.

5 Fond Obshchestvennoe Mnenie (FOM) survey in November 2016 ("52 Protsenta Rossiyan Opasayutsya Ugrozy Masshtabnoi Voyny so Stranami NATO" – 52 Percent of Russians Fear the Threat of large-Scale War with NATO, RIA-Novosti, November 8, 2016, Available here: <https://ria.ru/society/20161108/1480921745>).

html); VTSIOM survey in May 2017 ("Poll: Russians See Biggest WMD Threats Coming from US, Al-Qaida, 'Chechens'", June 12, 2017, Available here: <https://www.russiamatters.org/blog/poll-russians-see-biggest-wmd-threats-coming-us-al-qaida-chechens>).

6 Rossiyan o Yadernom Oruzhii i Yadernykh Ugrozakh. Moscow: PIR Center, 2000.

7 Rossii Poka Neobkhodimo Yadernoe Oruzhie – Patriarkh Kirill. RIA Novosti, September 11, 2009 (Available here: <http://ria.ru/society/20090911/184653929.html>).

The Foreign Ministry's position paper on the implementation of Article VI of the NPT published shortly after the completion of the TPNW, in July 2017, did not make a single reference to the treaty. It stated that the "reduction and limitation of nuclear arsenals must be implemented in a way that facilitates the strengthening of strategic stability and the growth of the security of all states without exception."<sup>8</sup> Similarly, the head of the Russian delegation to the 2017 Preparatory Committee to the 2020 NPT Review Conference, Mikhail Ulyanov, proclaimed that "realistic politics assumes the need of comprehensive accounting for all factors that influence strategy stability and international security... there is no place for approaches that might be noble, but are detached from reality."<sup>9</sup>

Only in rare cases when a clearer statement could not be avoided would Russian representatives publicly indicate their negative attitude. One such case was the statement of the Russian Permanent Representative to international organizations in Vienna, Ambassador Vladimir Voronkov who in no uncertain terms condemned proposals to use IAEA safeguards for the purposes of verification of the ban treaty declaring that "the initiators of the convention challenge the fundamental principles of the IAEA safeguards system by watering down its goals and tasks."<sup>10</sup> Even in that

case, the Russian representative refrained from directly opposing the ban treaty's negotiations limiting his intervention to a specific issue.

In the end, the most comprehensive public statement of the Russian attitude toward the ban treaty was presented interview of Ambassador Mikhail Ulyanov in September 2017.<sup>11</sup> That is, several months after the negotiations concluded, in an interview to a newspaper rather than in an official statement, and by a chief of a foreign ministry department instead of the President or the Minister of Foreign Affairs. The Foreign Minister spoke about it only in October 2017. There had been plenty of opportunities to express the Russian position earlier, but Moscow had carefully avoided it. The reasons are difficult to determine with any degree of certainty. Without doubt, however, attempts to downplay Russian opposition do not indicate even a very remote possibility that Moscow might suddenly support the ban treaty. A more likely explanation is the desire to avoid unnecessarily antagonizing some of the more vocal proponents of early nuclear disarmament who are important for Russian foreign policy in other areas, countries such as Egypt, Iran and Mexico. Moscow preferred to downplay its disagreement to prevent detracting from potential cooperation in a variety of other policy area. This continued until Moscow could better assess the degree of importance these countries attach to the ban treaty and seemingly determine that open opposition to the TPNW would not have an adverse effect on bilateral cooperation. That explanation is consistent with its greater sensitivity to positions of non-aligned countries at international organizations, in particular the IAEA, where Russia seeks to present itself as the defender of developing states from

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8 "Voprosy Yadernogo Razoruzheniya" (Issues Related to Nuclear Disarmament), July 6, 2017, Available here: [http://www.mid.ru/ru/foreign\\_policy/international\\_safety/disarmament/-/asset\\_publisher/rp0fiUBmANaH/content/id/26123661/2](http://www.mid.ru/ru/foreign_policy/international_safety/disarmament/-/asset_publisher/rp0fiUBmANaH/content/id/26123661/2)

9 Statement by Mikhail Ulyanov at the First Session of the Preparatory Committee for the 2020 NPT Review Conference, Vienna, May 2, 2017 (Available here: [http://www.mid.ru/ru/foreign\\_policy/international\\_safety/disarmament/-/asset\\_publisher/rp0fiUBmANaH/content/id/2742964](http://www.mid.ru/ru/foreign_policy/international_safety/disarmament/-/asset_publisher/rp0fiUBmANaH/content/id/2742964))

10 A statement of the Governor representing the Russian Federation during a meeting of the IAEA Board of Governors in response to an offer to the IAEA to participate in negotiations on a convention on the prohibition of nuclear weapons, Vienna, June 15, 2017

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Available here: [http://www.mid.ru/ru/foreign\\_policy/international\\_safety/disarmament/-/asset\\_publisher/rp0fiUBmANaH/content/id/2789245](http://www.mid.ru/ru/foreign_policy/international_safety/disarmament/-/asset_publisher/rp0fiUBmANaH/content/id/2789245)

11 "Zapret Yadernogo Oruzhiya Protivorechit Natsionalnym Interesam Rossii" (A Ban on Nuclear Weapons Contradicts National Interests of Russia). Kommersant-Daily, September 12, 2017 (Available here: <https://www.kommersant.ru/doc/3409219?tw>)

assertive US behaviour.

In any event, Russia's low profile with respect to criticising the ban treaty should not conceal a simple fact: there are few countries in the world that oppose the TPNW as strongly and consistently as Russia. It believes nuclear weapons are essential for its security and perhaps even its existence. The public and the elite support the government on this assessment. In fact, it would take a major improvement in international relations and radical reduction of tensions - to such an extent which is plainly not feasible in the near future - to make Russia more actively pursue major reduction of nuclear weapons. Therefore, nuclear disarmament seems out of the question.

One remaining question is whether Russia will actively oppose the ban treaty. Its low-key reaction thus far suggests that it will not. Rather it will most likely remain silent and pretend that the ban treaty does not exist. It will try to stay away from public debates and will not openly oppose the measure itself nor the non-nuclear states which promote it. Ignoring an issue is rarely a good policy but this is the best that Russia can do now. It will happily cede active opposition to others, the United States in particular.

*"As relations between Russia and the West continue to deteriorate, prospects for nuclear disarmament will only worsen."*

As relations between Russia and the West continue to deteriorate, prospects for nuclear disarmament will only worsen. There is no appetite on part of any NWS to consider significant reductions and Russia is perhaps one of the most unwilling. Yet, given the apparent sensitivity of Moscow toward some of countries that led the nuclear ban treaty effort, it could benefit from taking steps that are symbolic or at least do not threaten the core of its nuclear missions. A high-level confirmation of its intention to reduce its reliance on nuclear weapons in the future could be helpful. Even more helpful would be a statement that changing

nuclear doctrine would open the possibility for further the reduction of nuclear arsenals. Although the Conference on Disarmament (CD) in Geneva remains deadlocked and cooperation between the United States and Russia has fallen to a new low, a reaffirmation of commitment to advancing the CD agenda or even better, a realistic sounding initiative, especially the Fissile Materials Cut-Off Treaty, could also help alleviate the pressure created by the ban treaty and also help to strengthen Article VI. Russia could also seek to play a more active role in consultations on the weapons of mass destruction free zone in the Middle East, leveraging its strong relations with both Israel and Iran.

Nuclear weapons have global implications but decisions about them are made by states on a national level and the international community can only try to find ways to influence them. Unfortunately, the ban treaty initiative has not reached its goal. Perhaps it was timing: it is difficult to find a period of time, even including the worst days of the Cold War, when NWS would be less prepared to entertain deep reduction and disarmament. Perhaps it was the shortcomings of the text itself. In any event, all, NWS have rejected the initiative, although the manner of that rejection has differed from one state to another and rejection was individual (Russia) or in a group (US-France-UK) instead of a common P5 position. That does not make the rift between the NWS and the group of NNWS who pioneered the ban treaty any narrower or the choices of those NNWS who abstained from supporting the ban any easier.

“No Nuclear Armed State, inside or outside the NPT, has indicated that it is awaiting a lead from the UK or France over its nuclear decisions”

**Paul Schulte**



# The UK, France and the Nuclear Ban Treaty

**Paul Schulte<sup>1</sup>**

The Treaty for the Prohibition of Nuclear Weapons (TPNW) is a coordinated attempt to force the global nuclear order towards total nuclear disarmament through a combination of moral suasion and politico-legal pressure on nuclear-armed states (NASS). It is an indicator of the deep international frustration with the slow movement towards promised disarmament. But it is also a rushed, technically flawed, deliberately divisive, and self-limiting diplomatic exploit which, in its present form, should be rigorously refuted.

## *France, Britain and the TPNW*

The UK and France are similar in their current understanding and opposition to the TPNW. In concert with the USA, they issued a P3 statement utterly rejecting the Treaty after its signature,<sup>2</sup> declaring they would never join or accept it as legally binding on them. Despite misgivings, the UK and the US were eventually prepared to attend the last of the preliminary conferences preceding

formal negotiations under UN auspices, in Vienna in December 2014, on the (false) promise of a consensus outcome. France had been suspicious of legitimising a polarising majoritarian, conveyor belt negotiation process, aimed towards a nuclear weapons convention. France regards its consistent boycott as more than justified and NATO positions are now aligned over the TPNW.

The UK and France occupy similar strategic positions, seeking to uphold a democratic transatlantic alliance, (although France does not assign its weapons to NATO). Both are cautious, status quo members of present nuclear order, to which they see no convincing alternative. They are legally recognised Nuclear Weapon States (NWSs) in good standing with the world's most important nuclear treaty, the 1968 Nuclear Non-Proliferation Treaty (NPT). In 2017, according to SIPRI,<sup>3</sup> French and British warhead totals were at around 300 and 215 respectively with fewer operationally available. These represent approximately half of their Cold War levels, together constituting fewer than 4% of a global total of around 15,000 weapons.<sup>4</sup>

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1 I'm extremely grateful for conversations and correspondence over the years with many experts on this and related subjects. Although word restrictions prevent me mentioning them by name, I think they will know who they are. But they are of course in no way responsible for the conclusions reached here. A fuller version of these arguments can be found at: <http://www.birmingham.ac.uk/schools/government-society/centres/iccs/research/groups/global-nuclear-order.aspx>.

2 United States Mission to the United Nations, Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons, Available here: <https://usun.state.gov/remarks/7892>, 7 July 2017

Against objective criteria of arsenal size, transparency, second strike stability, and avoidance of coercive threats or brinkmanship, France and the UK can claim to the unsurpassed in the responsibility with which they treat their nuclear status and capabilities. Although they continue to modernise their deterrents they can claim that this is observably different to nuclear arms racing and necessary to keep them safe,

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3 SIPRI "Trends in World Nuclear Forces", 2017, Available here: [https://www.sipri.org/sites/default/files/2017-06/fs\\_1707\\_wnf.pdf](https://www.sipri.org/sites/default/files/2017-06/fs_1707_wnf.pdf), Accessed 04/12/2017

4 Over 90% are held by Russia and America. Chinese, Israeli, Indian, Pakistani, and DPRK nuclear numbers remain undisclosed - and most are probably continuing to grow.



secure and effective. They remain committed to good faith negotiations towards a denuclearised world. They have both supported, (and, in 2009, the UK initially proposed), the P5 Process to try to progress multilateral NWS consultation and cooperation on disarmament - related issues. This has broadened from verifiable warhead dismantlement to common nuclear terminology of transparency and possible fissile material production ban. Progress has been generally slower than hoped, with the pace set by the least transparent NWSs, usually thought to be Russia and China.<sup>5</sup>

Given their own small nuclear stockpiles and modest strategic roles, France and Britain lack leverage to make major changes within the P5 process or in wider global nuclear arrangements. Although they are not blocking any wider move to a nuclear free world, campaigners call for them “to take the lead” in some new process which engages at least the NWSs if not all the NASs.

Yet, none of their previous nuclear reductions have produced any identifiable impact on other states’ nuclear choices over horizontal or vertical proliferation. No NAS, inside or outside the NPT, has indicated that it is awaiting a lead from the UK or France over its nuclear decisions.

If Britain or France were now, against domestic democratic pledges, to accept TPNW injunctions and offer to eliminate, or never to use, their tiny percentages of the global nuclear weaponry, the disparity of commitment and capability between America and Europe in NATO would be dramatically accentuated and the east-west European nuclear balance seriously disturbed. According to their own consistent national defence analyses, this would critically reduce French and British security. No one expects reciprocal reductions.

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5 Andrea Berger and Malcolm Chalmers, “Great Expectations The P5 Process and the Non-Proliferation Treaty” RUSI Whitehall Paper No 3, 2013, Available here: [https://rusi.org/sites/default/files/whr\\_3-13\\_web.pdf](https://rusi.org/sites/default/files/whr_3-13_web.pdf)

## **Public Opinion and Electoral Possibilities**

The TPNW negotiations have had little impact on public opinion in either country. Outside the disarmament community, electorates seem largely unaware of the treaty, although the award of the Nobel Peace Prize to the International Campaign against Nuclear Weapons (ICAN) gained some media attention. Major political parties in both countries remain almost uniformly committed to Nuclear Weapon State (NWS) status.

It is possible that a UK election might bring Jeremy Corbyn’s Labour Party to power, with a changed Parliamentary membership, and that the TPNW might then offer an additional impetus to implement his long established unilateralist intention, overturning his party’s existing policy of maintaining and modernising the UK Trident nuclear system. However, the timing would have been determined by domestic politics, focusing on very different issues, rather than Treaty signature.

## **Fundamental Objections**

The TPNW, as a disarmament instrument, is intended to rupture any “**tolerable accommodation of pronounced differences in the capabilities, practices, rights and obligations of states**” essential to maintain global nuclear order.<sup>6</sup> Yet, it provides no menu of alternatives to manage the various strategic anxieties or ambitions of NAS national security decision-makers. So it is - deliberately - objectionable to all nuclear states. Its negotiation failed to persuade a single NAS or ally to sign-even Norway, the Netherlands, or Japan. Its favoured “*stigmatisation*” of nuclear weapons has been ignored by both sides in the 2017 Korean Crisis. It cannot become customary international law for those who will not sign it, and it is not based on any moral or demographic majority (signatory states comprise only 39% of UN population, compared to 61% for non-

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6 William Walker “A Perpetual Menace: Nuclear Weapons and International Order”, Routledge Taylor and Francis Group London and New York 2012, p180

signatories).<sup>7</sup>

Overall, the TPNW campaign shirks the requirement for creative thinking to acknowledge, understand and overcome structural obstacles to transformative collective action. Instead, the TPNW's strategy of undifferentiated popular pressure demands movement beyond the present disarmament stalemate, but fails to analyse where progress is most needed, who is blocking it, and which solutions might facilitate it.

It disregards the huge, unprecedented, technical and political problems posed by verifiable disarmament of nuclear weapons. It overlooks the daily demonstrated current weakness of the international institutions which would be required to oversee and then indefinitely guarantee nuclear abolition. It offers no solutions to the systematic distrust which would overhang the compliance, if NASs could be induced to sign. (If they did, they would become subject to discriminatory verification standards and obstructed in withdrawal if others cheated or even went to war with them.) It ignores moral differences between nuclear deterrence and nuclear intimidation, treats all NASs as equally dangerous in force postures and behaviours, and equally responsible for blocking disarmament. This is particularly unreasonable for the UK and France, who cannot hope to affect decisions of countries in very different strategic situations and much more dependent on larger or expanding nuclear arsenals.

The TPNW exalts *agency* or "critical will". But its evangelical voluntarism would unfold, if at all, with extreme, systematically perverse global variability among non-signatories. It would disproportionately affect the most scrupulous

and democratic NASs and alliances. Its campaign rests upon an unconvincing future history, conflating legitimate abolitionist exhortation with implausible prediction: the TPNW must be universally adopted because it *will* inevitably lead to accelerated total disarmament - apparently because 122 nations and some energetic international activist networks loudly claim that it *should*. (Yet repeatedly cited precedents such as cluster munitions, landmines, chemical and biological weapons are far from universally and reliably banned.) The TPNW text knowingly backslides from best existing verification standards, such as the IAEA's Additional Protocol, which had evolved in response to proven clandestine attempts at nuclear breakout. Above all, while failing to eliminate a single nuclear weapon, if the TPNW were seriously internationally pressed, *it would do harm*: damaging nuclear non-proliferation efforts by setting up an alternative treaty, asserting legal precedence over the NPT, competing with it for specialist resources and legitimacy, and without requiring continued NPT membership for TPNW signatories.

## ***French and British Choices – Recommendations***

### **1. Tone and Audience**

From official French and British perspectives, therefore, there are overwhelmingly strong interlinked arguments against the TPNW. Their government representatives should not concede any moral superiority to its advocates. But judgement will be needed in deciding exactly which objections should be stressed and the tone in which to express them to specific audiences.

- It may accordingly sometimes be prudent to deemphasise strong but provocative arguments so as to minimise the divisiveness which has been a deliberate campaigning strategy of the TPNW's promoters. Sensitivity and restraint could assist joint work with moderately anti-nuclear states, to develop forward-looking compromises. And, while energetic diplomatic and intellectual rebuttal over security realities is also required, it should

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7 Alyn Ware "The Ban Treaty and the Nuclear-Armed States: From Irrelevance to a Game-Changer" In-Depth News, 10 July 2017, Available here: <https://www.nuclearabolition.info/index.php/1053-the-ban-treaty-and-the-nuclear-armed-states-from-irrelevance-to-a-game-changer>, Accessed 04/12/2017

be expressed without undermining general confidence in international structures and disarmament processes. Increased attention to nuclear issues created by the TPNW dispute could at least provide opportunities to point to constructive possibilities for real progress in creating preconditions for disarmament.

## 2. Maintaining verification standards in a deteriorating arms control environment

The sheer, indefensible, technical inadequacy of the TPNW's rushed verification and safeguards provisions needs to be emphasised and explained if worldwide verification standards are to be maintained, against continual background pressures away from transparency in most arms control and disarmament regimes. The UK has been particularly interested in efforts to advance international verification methodologies, especially in the nuclear realm, with initiatives such as the UK Norway Project,<sup>8</sup> which has been exploring how non-nuclear weapon states might participate in elimination of warheads, without revealing proliferation sensitive material.

In 2015 the US State Department and the Nuclear Threat Initiative inaugurated an International Partnership for Nuclear Disarmament Verification (IPNDV)<sup>9</sup> assessing monitoring and verification issues across the nuclear weapons lifecycle. Its initial focus is on potential options for monitoring

nuclear warhead dismantlement, the most demanding aspect of future nuclear reductions. Wider international participation in the IPNDV would be extremely desirable. It would spread understanding of the unappreciated difficulties - related to political, proliferation and intelligence concerns.

## 3. Addressing frustration over slow progress on disarmament

The TPNW's signal of collective frustration has also to be taken seriously even though the message is (seemingly deliberately) not actionable in its present form. Resumed movement towards nuclear disarmament is essential, not just to save the NPT, but to reduce and manage nuclear dangers. The TPNW is evidence that NNWS patience with the step-by-step approach towards disarmament has seriously eroded.

As both governments have repeatedly indicated, ending the general stalemate in nuclear reductions would be entirely in French and British interests. Achieving a positive result or at least minimising damage at the 2020 NPT Prep Com is an important goal for both countries, the NATO Alliance, and the entire international system. But a first step to change is reaching accurate and widely shared analyses of current problems. Recognising the interlocking limitations of the present security environment does not mean permanently accepting them.

*“Recognising the interlocking limitations of the present security environment does not mean permanently accepting them.”*

8 UK/ NOR/VERTIC Report, Presentation on the UK-Norway Initiative on Nuclear Warhead Dismantlement Verification, 2009, Available here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/28428/presentation\\_on\\_the\\_uk\\_norway\\_initiative\\_on\\_nuclear\\_warhead\\_dismantlement\\_verification.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/28428/presentation_on_the_uk_norway_initiative_on_nuclear_warhead_dismantlement_verification.pdf), Accessed 04/12/2017

9 Nuclear Threat Initiative, INTERNATIONAL PARTNERSHIP FOR NUCLEAR DISARMAMENT VERIFICATION ENGAGING A DIVERSE GROUP OF STATES TO DEVELOP INNOVATIVE MONITORING AND VERIFICATION SOLUTIONS, More information available here: <http://www.nti.org/about/projects/international-partnership-nuclear-disarmament-verification/>

In concert with allies, the UK and France should therefore conduct or intensify discrete soundings with moderate states and organisations supporting the TPNW, in advance of the 2018 UN High Level Conference on Nuclear Disarmament, and the 2020 NPT Review Conference, to examine the extent of agreement over the key obstacles to

change in the nuclear order and how these might be removed. Here, wider passions raised by the TPNW might help in moving things forward if they can be focused effectively. Looking for common understandings and practical cooperation will indicate whether key TPNW sponsors and advocates genuinely want to reduce global risks from nuclear weapons or simply use the Treaty to amplify resentments at such a symbolically salient form of global inequality.

What can be done now to achieve practical movement? Who is blocking key steps towards attainable disarmament? How can their justifications and underlying motives be best understood? Are they susceptible to movement through international lobbying and diplomatic pressures of the kind envisaged in the TPNW? If so, how can that campaign be best mobilised? There is no shortage of potentially productive areas or initiatives.

The most critical blockages are likely to be the traditional disarmament agenda items:

**Reducing nuclear superpower warhead numbers by ending the U.S.-Russia stalemate over strategic reductions.** Renewed U.S.-Russian strategic stability talks were announced in September 2017 and exacerbated international pressures may now have some opportunity to take effect. Clearly British and French governments would favour a deal and have made this clear in various fora. But American offers of symmetrical major reductions have been on the table for some years and open Franco - British government statements pressing for rapid, *unbalanced* movement in this most sensitive strategic area would be counter-productive if public and ignored in private.

**Achieving universal ratification and signature of CTBT and completion of its verification regime** UK and French support for CTBT is well known. It should be continued, though most effectively behind the scenes. Past public pressures from Allies have not been well received by the US Senate which has prevented US government ratification. Even if this hurdle were overcome, DPRK, Egypt, India, Indonesia, Iran, Israel, and

Pakistan would also have to ratify before the CTBT could enter into force. (India, North Korea and Pakistan have still to sign it) France and Britain will remain part of the diplomatic coalition pushing for universalisation, but they have no obvious way of prevailing over domestic opposition by holdouts.

#### **Ending Pakistani obstruction over Fissile Material Cut-Off and the long inactivity of the Conference on Disarmament.**

A recurrent dilemma emerges for many of the options. Overt international pressure on individual nuclear actors to stop blocking disarmament may lead to angry recrimination which would worsen the atmosphere for any kind of P5 Process, or for cooperation with non-NPT NASSs. But that dilemma will eventually have to be addressed in some way if global attitudes are to be a factor in determining the nuclear future, which is the obvious intention behind TPNW.

#### **4. Responsible Nuclear Sovereignty**

In addition to the familiar list above, there remains a major gap in the global conversation about Responsible Nuclear Sovereignty (RNS)<sup>10</sup>: how to define the principles by which NASSs should be internationally judged on their conduct for the indefinite future in which nuclear arsenals remain. France and Britain have every reason to wish to encourage or sponsor such a discussion and to involve non-nuclear states and disarmament organisations. It would address issues such as transparency and restraint in nuclear numbers, nuclear signalling (avoidance of intimidatory "sabre rattling"), developing nuclear forces with C3 arrangements and basing modes which minimise temptations for first strike, consistent support for diplomatic solutions, such as the NPT, and for genuinely effective nuclear security precautions,

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10 Sebastian Brixey-Williams and Paul Ingram, Responsible Nuclear Sovereignty and the Future of the Global Nuclear Order, 6 February 2017, Available here: [http://www.basicint.org/sites/default/files/Brixey-Williams%20and%20Ingram%2C%20Responsible%20Nuclear%20Sovereignty%20Report%20PDF\\_FINAL](http://www.basicint.org/sites/default/files/Brixey-Williams%20and%20Ingram%2C%20Responsible%20Nuclear%20Sovereignty%20Report%20PDF_FINAL)

non-proliferation policies and export controls. These are all areas in which the UK and France are role models and have practical experience to share.

### 5. Further Associated Work to Support Eventual Nuclear Disarmament

Unimpeded nuclear proliferation reduces any chance of nuclear disarmament. Seriously committed signatory states could therefore contribute to the eventual plausibility of the TPNW vision in a number of ways. The disturbingly rapid development of DPRK's nuclear capabilities indicates how much needs to be done to tighten up export controls. But many TPNW signatory states have not introduced and enforced adequate nuclear export control regulations, and show a significantly worse average performance than non-signatories.<sup>11</sup> The International Atomic Energy Agency should be adequately and reliably funded for its work in Iran, and its gold standard Additional Protocol should be universally signed.

A range of constructive ideas have also recently been developed by the Carnegie Endowment<sup>12</sup> proposing an improved analytic approach—a nuclear firewall—to help distinguish between purely peaceful and weapons-related activities and programmes. Related suggestions include levelling up the nuclear trade playing field by consolidating widely recognized existing benchmarks for credible nuclear power programs,

11 Most Nuclear Ban Treaty Proponents are Lagging in Implementing Sound Export Control Legislation” by David Albright, Sarah Burkhard, Allison Lach, and Andrea Stricker, Institute for Science and International Security, 27 September, 2017

12 Dalton, T et al, Report for Carnegie Endowment for International Peace, TOWARD A NUCLEAR FIREWALL Bridging the NPT's Three Pillars, Available here: [http://carnegieendowment.org/files/CP\\_301\\_Dalton\\_et\\_al\\_Firewall\\_Final\\_Web.pdf](http://carnegieendowment.org/files/CP_301_Dalton_et_al_Firewall_Final_Web.pdf) See also Levite, A and Dalton T, Leveling Up the Nuclear Trade Playing Field, 2017, Available here: <http://carnegieendowment.org/2017/09/07/leveling-up-nuclear-trade-playing-field-pub-73038>

establishing consistency between the production of fissile material and reasonable civilian needs, and articulating a norm of self-restraint on nuclear weaponisation research and development.

The Nuclear Threat Initiative has made proposals on Negative Security Assurances (NSAs),<sup>13</sup> which could be further examined in the CD, or conceivably within the NPT system, to assess the possibility of a single internationally legally binding instrument going beyond the existing pledges by the 5 NPT NWSs. Positive Security Assurances could be further examined, to provide assistance, in accordance with the UN Charter, to a NNWS victimised by an act or threat of nuclear aggression. This could help with the distressing potential problems which the Humanitarian Impacts Movement, precursor to the TPNW campaign, was ostensibly created to address, but over which absolutely nothing has been achieved.

### 6. Addressing military imbalances, advanced conventional weapons and growing systemic distrust

Finally, at the highest international level, there are widening background issues of military imbalances in different sectors; and increasing crossover between nuclear capabilities and advanced conventional strategic weapons with strategic impacts, especially long-range precision strike and missile defences. There is currently no forum where this expanding range of problems can be adequately addressed. Here France and Britain could work in support of the approach, developed in successive articles by Shultz, Perry, Kissinger, and Nunn, for a large-scale, long term, international Joint Enterprise effort with a major role for non-nuclear weapon states, to understand and control destructive, potentially overwhelming

13 Nuclear Threat Initiative, PROPOSED INTERNATIONALLY LEGALLY-BINDING NEGATIVE SECURITY ASSURANCES (NSAS), May 2017, Available here: <http://www.nti.org/learn/treaties-and-regimes/proposed-internationally-legally-binding-negative-security-assurances/>



nuclear risks.<sup>14</sup>

Ideally, further work would also discuss wider disarmament regime verification, together with (intensely contested) problems of dispute resolution over compliance, and reliable, non-partisan, enforcement and global governance of WMD agreements. The hopeful multilateral achievements which accompanied the end of the Cold War, such as The INF Treaty, The Open Skies Agreement, The Vienna Document, the Conventional Forces in Europe Treaty and the Chemical Weapons Convention, are now seriously threatened by withdrawals, refusals of transparency, obstruction and non-compliance, in ways which the TPNW completely ignores. Yet the eventual credibility of any future disarmament instruments will depend upon expectations of trustworthy international behaviour. Disarmament will not occur in a Post-Truth World. States supporting the TPNW should be reminded of this and encouraged to request full information and actively express reasoned opinions over the most divisive and confidence-reducing disarmament issues, in view of their destructive wider impacts on the attainable nuclear future.

## ***Prospects***

None of these complicated and painstaking activities will lead to the immediate abolition of any nuclear weapon. But neither, as everyone acknowledges, will the ban treaty. As responsible nuclear sovereigns - and unlike TPNW campaigners - the British and French governments will have to continue their search for dependable, rules-based security improvements within the limits of what major strategic actors are realistically prepared to accept. In doing so, they can reasonably point out how many important things could be achieved

to create a more propitious world for nuclear disarmament, eventually offering opportunities for better designed treaties, if international energies are not divided and misdirected into acrimonious protest.

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14 James E. Goodby and Steven Pifer "Creating the Conditions for a World without Nuclear Weapons" Chapter 15 in George Shultz and James Goodby "The War That Must Never Be Fought: Dilemmas of Nuclear Deterrence" Stanford, CA: Hoover Institution Press, 2015 . Available for download at <https://www.brookings.edu/research/the-war-that-must-never-be-fought-dilemmas-of-nuclear-deterrence/>

“China could use the ban treaty as an opportunity to promote a no-first-use policy among the other Nuclear Weapon States.”

**Raymond Wang & Tong Zhao**

# China and the Nuclear Ban Treaty

## Raymond Wang & Dr Tong Zhao<sup>1</sup>

Unlike three of its fellow P5 countries (the United Kingdom, France, and the United States) which released a harsh joint statement against the adoption of the Treaty on the Prohibition of Nuclear Weapons (TPNW) on 7 July 2017,<sup>2</sup> China has yet to publicly announce its position. While it boycotted the negotiations, the Chinese Government has so far been the least hostile of the five Nuclear Weapon State (NWS) administrations towards the treaty. China was the only country that did not vote against the TPNW negotiations at the UN General Assembly in 2016 and Foreign Ministry spokesperson Hua Chunying stated on 20 March 2017 that the Chinese goal of a “final comprehensive ban on and total destruction of nuclear weapons” was “fundamentally in line with the purposes of negotiations on the nuclear weapons ban treaty.”<sup>3</sup>

However, in the present circumstances the treaty is as unacceptable to China as it is to the other nuclear armed states. China both possesses nuclear weapons and has a policy of retaliating with nuclear weapons only after a nuclear strike by an adversary. As such it cannot adhere to the treaty's core prohibitions. Nevertheless, it broadly supports the spirit behind the TPNW and certain principles also align with its domestic and international policy goals.

In practice, entry into force of the TPNW would not undermine China's existing nuclear policies as long as it does not sign it. This leaves room for China to avoid denouncing the treaty while still being able to protect its key security interests. Looking to the future, China can and should seek to actively engage with the treaty and continue to promote disarmament as a non- Party to the TPNW.

*“In practice, entry into force of the TPNW would not undermine China's existing nuclear policies as long as it does not sign it.”*

1 This chapter has been adopted from the Policy Brief published in September 2017 by the Asia Pacific Leadership Network for Nuclear Non-Proliferation and Disarmament (APLN) and the Center for Nuclear Non-Proliferation and Disarmament. ELN would like to express gratitude to the Authors and the APLN for agreeing to include it in this volume. The original paper is available at: [http://a-pln.org/briefings/briefings\\_view/Policy\\_Brief\\_No\\_45\\_-\\_China\\_and\\_the\\_Nuclear\\_Weapons\\_Prohibition\\_Treaty?ckattempt=2](http://a-pln.org/briefings/briefings_view/Policy_Brief_No_45_-_China_and_the_Nuclear_Weapons_Prohibition_Treaty?ckattempt=2)

2 “Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons,” US State Department, 7 July 2017, <https://usun.state.gov/remarks/7892>

3 Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference on 20 March, Ministry of Foreign Affairs of the PRC, 20 March 2017. [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/t1447146.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1447146.shtml).

Although China will not have a legal obligation to implement the TPNW's prohibitions, its interests and policies could nonetheless be affected. This is because legal obligations on the States Parties may make them adopt policy measures which could make it difficult for China to maintain its existing nuclear posture. A potential concern would be over the issue of transit and stationing as China has a growing fleet of nuclear ballistic missile submarines (SSBN) which need to

Similar language can also be found in China's working paper submitted to the 2017 NPT PrepCom titled “Nuclear Disarmament and Reducing the Danger of Nuclear War” NPT/CONF.2020/PC.I/WP.36 para. 1.



conduct patrols outside its territorial waters. This might be problematic should China's neighbouring countries interpret the nuclear ban treaty to include an obligation for them to prevent the transit of Chinese SSBNs in their exclusive economic zones (EEZs). In that regard, Article 1(g) prohibits "stationing, installation or deployment" of any nuclear weapons in a State Party's territory or jurisdiction. The treaty offers no specific definition of "stationing," but according to other international legal documents such as nuclear weapon free zone (NWFZ) treaties "stationing" usually refers to "implantation, emplacement, transport on land or inland waters, stockpiling, storage, installation and deployment."<sup>4</sup> According to this common definition, conducting SSBN patrols in another country's EEZ is not explicitly prohibited, as under the UN Convention on the Law of the Sea, EEZs only grant states limited jurisdiction that does not include exclusive passage rights.<sup>5</sup> Furthermore, efforts during the negotiation of the nuclear ban treaty to explicitly include "transit" in Article 1(g) as part of a prohibition on "assistance" failed. This means the prohibition in the ban treaty on assisting nuclear weapon activities does not translate into an obligation on States Parties to ensure that SSBNs of non-parties cannot transit their EEZs.

China can benefit from the momentum created by the ban treaty in areas where positions are aligned and where China can make concrete contributions in the spirit of the treaty.

The prohibition of the threat of use of nuclear weapons is provided in Article 1(d) and is an area of significant overlap between Chinese and the TPNW. China is the only NWS with an unconditional and sole purpose no-first-use (NFU) policy. Furthermore, there is a difference between a NFU policy and a prohibition on the threat of use. After all, China is still threatening to use nuclear weapons in retaliation against a nuclear attack.

That said however, China's "threat of use" only applies to other nuclear possessor states and only to scenarios where another country has crossed the nuclear threshold first against China. A NFU policy towards all non-NWS and nuclear weapons free zones is a logical and significant step towards achieving a comprehensive prohibition on the threat of use. Indeed, within the NPT processes China has consistently called on the other nuclear weapon states to "unequivocally undertake not to be the first to use nuclear weapons at any time and under any circumstance, and undertake unconditionally not to use or threaten to use nuclear weapons against non-nuclear-weapon States or nuclear-weapon-free zones."<sup>6</sup>

*"China could use the ban treaty as an opportunity to promote a no-first-use policy among the other nuclear weapon states."*

China could use the ban treaty as an opportunity to promote a no-first-use policy among the other nuclear weapon states. In more concrete terms, instead of submitting a working paper alone, as it has traditionally done so in past NPT conferences, China could co-sponsor working papers on no-first-use with the countries that embrace the idea. Domestically, it can also use this as evidence of the international support of its NFU policy and thus its restrained posture. This is a strong counter-argument against those who hope to see China adopt an escalated nuclear posture. In 2013, the China Academy of Military Science (AMS) published *The Science of Military Strategy*, in which the authors suggested that China could move towards a "launch on warning" posture, namely "under conditions confirming the enemy has launched nuclear missiles against us, before the enemy nuclear warheads have reached their targets and effectively exploded, before they have caused us actual nuclear damage, quickly launch

4 See NWFZ treaties such as the Bangkok Treaty, the Treaty of Pelindaba etc. Treaty texts can be found at the UNODA website. <https://www.un.org/disarmament/wmd/nuclear/nwzf/>

5 Art 56 1(b), UN Convention on the Law of the Sea.

6 "Security Assurances," NPT/CONF.2020/PC.I/WP.32.

a nuclear missile retaliatory strike.”<sup>7</sup>

Furthermore, some argue that military capability developments in the United States, such as advancements in ballistic missile defence and conventional precision strike weapons will erode the strategic balance between the United States and China. This concern is exacerbated by the fact that the United States refuses to acknowledge mutual vulnerability with China. The policy debate is still ongoing. Although it has not become official policy, an increasing number of voices have recently advocated for China to significantly increase the role of nuclear weapons and to greatly expand its nuclear arsenal. In this regard, the ban treaty is a strong political argument against escalating China’s existing nuclear posture. To date, the TPNW is the most comprehensive legal instrument that seeks to minimize the role of nuclear weapons by explicitly prohibiting the threat of use of nuclear weapons, and enjoys overwhelming international support.<sup>8</sup>

Looking to the future, China can and should take a number of additional measures to promote nuclear disarmament and to narrow the gap between itself and the ban treaty’s supporters. China should participate in State Party Meetings as an observer, as provided for in Article 8(5). Observers cannot make statements or interventions, but if the nuclear ban treaty follows NPT customs, observer states can circulate their own documentation at their own cost during the event.<sup>9</sup> Side events with informal rules of procedure can further facilitate cooperation between non-NWS and China.

Moreover, in the treaty’s text, there is no further elaboration on verification of nuclear disarmament

other than it will be undertaken by a “competent authority.” There are technical reasons for this vague wording. Current technological capabilities present a trade-off between the correctness and intrusiveness of disarmament verification, and there is a lack of “ready-to-deploy technologies to support monitoring and verification activities associated with nuclear weapons in storage or to authenticate an item declared to be a nuclear warhead.”<sup>10</sup> Even with less intrusive methods, sensitive data is still collected, albeit with information barriers that would keep this information from the inspecting party.<sup>11</sup> The nuclear ban treaty will eventually have to confront these issues, and to this end, China can play a more active role in multilateral efforts on disarmament verification.

There are some areas where further research could advance disarmament verification. For example, scholars have proposed a “zero-knowledge protocol” that could assess the authenticity of a “physics package” of a warhead without collecting sensitive information in the first place. For instance, a team at Princeton University demonstrated, on an experimental level, the feasibility of this approach for warhead verification.<sup>12</sup> A more recent initiative called CONFIDANTE at Sandia Labs is also exploring a new approach based on the zero-knowledge

7 Gregory Kulacki, *China’s Military Calls for Putting its Nuclear Forces on Alert*, Union of Concerned Scientists, January 2016, p. 4.

8 Certain NWFZ treaties also have a similar prohibition, but only have regional membership.

9 Tariq Rauf, “Preparing for the 2017 NPT Preparatory Committee Session: The Enhanced Strengthened Review Process,” SIPRI Brief, 25 February 2017.

10 Martin Rioux-Lefebvre, Andrew Newman and Andrew Bieniaski, “Progress Under the International Partnership for Nuclear Disarmament Verification,” Paper submitted to the 58<sup>th</sup> Institute of Nuclear Materials Management Annual Meeting Proceedings, July 2017. [http://www.nti.org/media/documents/NTI\\_INMM\\_IPNDV\\_Paper\\_Jul2017.pdf](http://www.nti.org/media/documents/NTI_INMM_IPNDV_Paper_Jul2017.pdf)

11 Alexander Glaser and Yan Jie, “Nuclear Warhead Verification: A Review of Attribute and Template Systems,” *Science & Global Security*, 23 (2015), pp. 157–70.

12 Sébastien Philippe, et al., “A physical zero-knowledge object-comparison system for nuclear warhead verification,” *Nature Communications* 7 (20 September 2016), p. 12890.

protocol.<sup>13</sup> Further research on scalability and reference item criteria can be a potential area of cooperation. In these areas, confidence-building measures between non-NWS and NWS can help bridge the confidence gap created by technical limitations, which can also make inspections more acceptable.

Currently, the main multilateral initiatives in this field are the US-led International Partnership for Nuclear Disarmament Verification (IPNDV),<sup>14</sup> and UK–Norway Initiative.<sup>15</sup> Of these two only the UK–Norway Initiative has an ongoing project on information barriers<sup>16</sup> and the present political climate in the United States may limit the resources available to the IPNDV. As such, there is a gap that China is well equipped to fill. To date, China has mostly been conducting independent research at the China Academy of Engineering Physics.<sup>17</sup> Joint research with other countries or organizations is taking place but only to a limited extent.

China can either engage with existing initiatives, partner with relevant programs, or create its own initiative, preferably with non-NWS partners. A greater level of Chinese support through these channels in the research areas mentioned above will help lay the technical foundations for a verifiable disarmament regime in the future, and help build its image as an important partner and

promoter of international nuclear disarmament.

China can also support some of the positive obligations the nuclear ban treaty creates for States Parties providing “age- and gender-sensitive assistance” to “individuals under its jurisdiction who are affected by the use or testing of nuclear weapons.” Also, China can provide technical, educational, and financial assistance in a transparent manner to those countries requiring such assistance. For instance, China can help Pakistan and Kazakhstan to take “necessary and appropriate measures towards environmental remediation of areas so contaminated by nuclear testing even through certain regional framework, such as the Shanghai Cooperation Organization. This can help reduce geopolitical concerns from Russia and other regional stakeholders. Of course, China can go beyond assistance to these two countries. Indeed, there is presently no multilateral initiative specifically for victims of nuclear testing. This is an area where China can make a substantive contribution.

*As China seeks to play a leadership role in global governance it can and should engage proactively with the international community on disarmament issues that help narrow the gap between NWS and non-NWS.*

13 “Overcoming the trust barrier in nuclear weapons verifications measurements,” Sandia Labs News Releases, Sandia Labs, 6 June 2017, Available here: [https://share-ng.sandia.gov/news/resources/news\\_releases/warhead\\_verification/#.WYGdwtOGORs](https://share-ng.sandia.gov/news/resources/news_releases/warhead_verification/#.WYGdwtOGORs)

14 US Department of State, International Partnership for Nuclear Disarmament Verification (IPNDV), Available here: <https://www.state.gov/t/avc/ipndv/>

15 United Kingdom – Norway Initiative, 2007, Available here: [www.ukni.info](http://www.ukni.info)

16 United Kingdom – Norway Initiative, Information Barrier, 2007, Available here: <http://ukni.info/project/information-barrier/>

17 Glaser and Yan, “Nuclear Warhead Verification,” p. 163.

In conclusion, cooperating with non-NWS through the prism of the nuclear ban treaty is in line with China’s long-term interests. While regretting that Chinese accession to the TPNW is impossible at present, certain provisions are compatible with Chinese policy goals. The treaty does not negatively affect China’s existing nuclear policies as a non-State Party. For these reasons, China does not need to respond harshly to the TPNW and should develop a forward-looking policy to further promote nuclear disarmament.

As China seeks to play a leadership role in global governance it can and should engage proactively with the international community on disarmament issues that help narrow the gap between NWS and non-NWS. Responding positively to the ban treaty and building on its momentum to promote disarmament is a necessary step to preserve the international consensus on disarmament and can be an important indicator of China's global leadership.

“Tokyo evaluates that the ban treaty will neither promote nuclear disarmament nor improve Japan’s security situation.”

**Hirofumi Tosaki**

# Japan and the Nuclear Ban Treaty

## Dr Hirofumi Tosaki

Japan reaffirmed its decision to not sign the Treaty on the Prohibition of Nuclear Weapons (TPNW) when it was adopted on 7 July 2017. Both domestic and international proponents of the treaty have moved to criticize this decision. As the only country which has suffered the consequences of nuclear attacks, Japan has been a long-time advocate for the total elimination of nuclear weapons. However, the decision not to support the treaty is not wholly unexpected. Japan voted against the 2016 UN General Assembly resolution to convene the conference to negotiate the legal prohibition of nuclear weapons. It also refused to participate in the negotiations after delivering a statement on the initial day of the first round in March 2017.<sup>1</sup>

### *Japan's opposition to the ban treaty*

Tokyo has issued a number of public statements explaining why it cannot support the ban treaty. In its March 2017 statement, it argued, *inter alia*, that a nuclear ban treaty would not resolve serious security concerns nor lead to the actual elimination of a single nuclear warhead. It also argued that the negotiation format was not conducive to pursuing nuclear disarmament measures in cooperation with the nuclear-armed states. It contended that the adoption of the treaty without the involvement of nuclear-armed states would only widen the divisions between nuclear-armed states and non-nuclear-weapon states as well as among the non-nuclear-weapon states themselves.<sup>2</sup>

Furthermore, the implications of the ban treaty vis-à-vis US extended nuclear deterrence also

factors into Japanese thinking. Japan's three neighbours, North Korea, China and Russia, whose relationship with Japan is unstable at the best times, all possess nuclear weapons. Japan faces very serious security threats from North Korea which has been aggressively testing nuclear and ballistic missiles and threatening the United States, South Korea and Japan. Under such circumstances, Tokyo considers the US nuclear umbrella indispensable for its defence, at least until such nuclear threats have been significantly reduced.

*"Tokyo evaluates that the ban treaty will neither promote nuclear disarmament nor improve Japan's security situation."*

In short, Tokyo evaluates that the ban treaty will neither promote nuclear disarmament nor improve Japan's security situation. It is evident that the government believes that acceding to the treaty will weaken Japan's national security. Hibakusha and some Japanese and international NGOs which have been promoting the TPNW have been calling on the Japanese government to support it. However, their arguments are not supported by Japan's ruling party, some opposition parties or the general public.

### *Effectiveness*

In the Japanese government's view, adopting the ban treaty does not represent a practical nuclear disarmament measure, not for the foreseeable future at least. It believes that the treaty is unlikely to bring about the reduction in numbers and salience of nuclear weapons, or even small disarmament concessions from nuclear-armed states. All of Japan's nuclear-armed neighbours are continuing to develop their nuclear arsenals despite accelerating efforts to conclude the treaty.

Ban treaty proponents claim that they do not expect an immediate accession by any of

1 Statement by H.E. Mr. Nobushige Takamizawa, at the High-level Segment of the United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, March 27, 2017, New York.

2 *ibid*

the nuclear-armed states to the treaty. Yet, they maintain that the nuclear-armed states cannot ignore the treaty's existence. They are attempting to reframe the nuclear narrative from a national security focus to one emphasizing the humanitarian considerations by stigmatizing nuclear weapons and promoting prohibition norms. The proponents believe that either sooner or later the nuclear-armed states will modify their behaviour and policies on nuclear weapons.

*"Japan's authoritarian nuclear armed neighbours tend to be less sensitive to external pressures of a prohibition norm and are also less likely to be pressured by their domestic audiences."*

Yet, recent balance of power transitions and geopolitical tensions in Asia mean that nuclear-armed states are placing greater weight on the security and political role of nuclear arsenals. Moreover, Japan's authoritarian nuclear-armed neighbours tend to be less sensitive to external pressures of a prohibition norm and are also less likely to be pressured by their domestic audiences. Japan fully recognizes the importance of humanitarian consequences of the use of nuclear weapons. Yet its national security cannot be reliant on the distant prospect of the eventual acceptance of a prohibition norm by the nuclear-armed states.

Establishing international norms including those banning chemical and biological weapons, land mines and cluster munitions were successful in not eroding the international order, or jeopardizing the national security interests of sovereign states. A norm on banning nuclear weapons is different. For nuclear-armed states to accept this norm would require a fundamental change of their perceptions of the role of nuclear weapons in their national security.

Furthermore, the ban treaty neither provides effective measures for the enforcement of the

compliance of its states parties nor does it address the nuclear threats posed by nuclear-armed states which sit outside the treaty. Therefore Japan is sceptical that the treaty will be effective in maintaining its national security against existing and future nuclear threats.

### ***Extended nuclear deterrence***

Until appropriate means of dealing with nuclear threats are found, Tokyo will not be able to renounce its reliance on U.S. extended nuclear deterrence. Tokyo considers that in the current security situation adherence to the nuclear ban treaty will not provide an effective means of managing these threats. On the contrary, should Japan join the treaty, which obliges it to renounce its reliance on US extended nuclear deterrence, this may weaken its security.

It is important to note however that Japan's rejection of joining the ban treaty does not mean that it has the intention nor is contemplating the possibility of acquiring its own nuclear capability. Amid the deteriorating security environment and increasing nuclear threats, the Japanese government has dismissed the idea that Japan should abandon or modify its Three Non-Nuclear Principles of not possessing, not producing and not permitting the introduction of nuclear weapons. Tokyo maintains that to counter the threat of nuclear weapons, "extended deterrence provided by the U.S. with nuclear deterrence at its core is indispensable"<sup>3</sup> for its national security.

As nuclear threats expand and as the United States completes its review of its nuclear posture, Japan's highest priority is to sustain and bolster the credibility of American extended nuclear deterrence. It is reasonable to conclude that the Japanese and joint Japanese-U.S. conventional forces will play a primary role in addressing most of the security challenges and military crises vis-à-vis nuclear-armed adversaries in North-east Asia until and unless they escalate to nuclear conflict. However, even if a conflict in the region is

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3 Japan, "National Security Strategy," December 17, 2013.



conventional, it will never be free from the nuclear factor. Regional nuclear-armed adversaries may attempt to achieve their objectives in a gray zone situation i.e. “neither pure peacetime nor contingencies over territory, sovereignty and maritime economic interests”<sup>4</sup>; or short of an armed conflict, including opponents’ attempts of *fait accompli* or probing; or at other lower-end military contingencies by implicitly or explicitly brandishing their nuclear deterrent.<sup>5</sup> They would also seek to offset Japanese-U.S. conventional superiority by threatening nuclear retaliation or even move to de-escalate a conflict by conducting limited nuclear attacks. Without adequate alternatives, U.S. extended nuclear deterrence guarantees will continue to be the means by which Japan is able to address potential nuclear threats.

Furthermore it is unfair for Tokyo to ask Washington to commit to deter and defend it from attacks by nuclear-armed adversaries with conventional forces alone. Limiting American military options would endanger Japan’s security and even suggesting such a restrained posture is likely to damage the Japan-U.S. alliance relationship, which is central to the credibility of extended deterrence.

### ***The way forward***

Japan’s opposition to the ban treaty does not mean that it is downgrading its support for nuclear disarmament. This remains one of the crucial pillars of Japan’s foreign and security policy. Tokyo shares the frustration of treaty’s proponents of the paralysis of current nuclear disarmament mechanisms. It has proactively

pursued the revitalization of nuclear disarmament in various forums and opportunities including the review process for the Nuclear Non-Proliferation Treaty (NPT), the Conference on Disarmament and the UN General Assembly. At the 2017 NPT Preparatory Committee (PrepCom), the then-Foreign Minister Fumio Kishida announced that Japan would establish an eminent persons group that would consist of “men and women from both nuclear and non-nuclear weapon states knowledgeable of nuclear disarmament” in order to “obtain proposals...that lead to a substantial progress of nuclear disarmament.”<sup>6</sup> The group held its first meeting in November 2017 in Hiroshima. Its recommendations on nuclear disarmament and non-proliferation are to be submitted to the 2018 NPT PrepCom.

In the same statement, Kishida also reiterated Japan’s position towards the legal prohibition of nuclear weapons:

*[W]hen we reach a so-called “minimisation point” at which the number of nuclear weapons is decreased to a very low level, we will introduce a legal framework aimed at achieving and maintaining a world free of nuclear weapons, and then, we will reach this goal...I am convinced that this approach provides the realistic and practical shortcut towards a world free of nuclear weapons, instead of pressing a legally binding instrument to prohibit nuclear weapons at this point in a manner that deepens the gap between nuclear and non-nuclear-weapon states. We should be well-advised about the time sequences of addressing the legal framework eliminating nuclear weapons.*<sup>7</sup>

4 Ministry of Defense of Japan, “National Defense Program Guidelines for FY 2014 and Beyond,” December 17, 2013, p. 1

5 A situation of stability-instability paradox would affect negatively to a credibility of extended deterrence. See Robert Jervis, “Deterrence, Rogue States, and the U.S. Policy,” T. V. Paul, Patrick M. Morgan and James J. Wirtz, eds., *Complex Deterrence: Strategy in the Global Age* (Chicago: The University of Chicago Press, 2009), p.138

6 “Statement by H.E. Mr. Fumio Kishida, Minister for Foreign Affairs,” General Debate, First Session of the Preparatory Committee for the 2020 NPT Review Conference, May 2, 2017.

7 *ibid*



Japan believes that the ban treaty correctly highlights the ultimate goal of nuclear disarmament. However, Tokyo adheres to the notion that the treaty neither establishes a realistic process toward that end nor sets any practical measures to break the current nuclear disarmament impasse which to Japan's mind, should be approached from both the humanitarian and national security viewpoints. Japan, together with other U.S. non-nuclear allies, has proposed following the so-called "progressive approach" which focuses on undertaking a series of parallel and simultaneous measures. These include, inter alia, increased transparency, confidence-building, and crisis management measures; further reduction of strategic and non-strategic nuclear weapons by the US and Russia, while other nuclear-armed states keep restraints on qualitative/quantitative build-up of respective nuclear arsenals; addressing Russia's alleged violation of the Intermediate-range Nuclear Forces (INF) Treaty; early entry into force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT); immediate commencement of negotiation toward the conclusion of the Fissile Material Cut-off Treaty (FMCT); and development of verification measures for nuclear weapons dismantlement. Resolving the security issues involving nuclear-armed states and addressing the root-causes which are hindering progress on nuclear disarmament is essential.

At the same time, Tokyo recognizes that it is not easy to maintain the momentum for nuclear disarmament in the current security environment. In such circumstances, small and less ambiguous steps would be helpful. Three specific proposals could be considered. First, steps should be taken to prevent the gap between nuclear and non-nuclear-armed states and among non-nuclear-armed states from widening. Japan could suggest for both treaty proponents and opponents to jointly reaffirm their commitment toward achieving the total elimination of nuclear weapons at the UN General Assembly, the NPT Review Conference and its PrepCom, or other appropriate international fora. The next step could be to resume discussions on how their respective approaches can co-exist and ultimately converge to break the current stalemate. The Non-

Proliferation and Disarmament Initiative (NPDI), which was initiated by Australia and Japan together with ten other non-nuclear-weapon states, both proponents and opponents of the TPNW, could be a useful platform to start those efforts.

Second, Japan can continue consulting bilaterally with the United States not only on the ways to strengthen the Japan-U.S. alliance, but also on how, to what extent, and under what circumstance they can actually rely less on extended nuclear deterrence. Unless nuclear threats vis-à-vis Japan are significantly reduced and eventually removed, US extended nuclear deterrence will remain the ultimate guarantor for Japan's national security. Meanwhile, the alliance could contemplate ways reducing the role of nuclear deterrence whilst strengthening the reliability of the overall deterrence posture through, for instance, bolstering conventional counterforce capabilities as well as ballistic missile defenses. Tokyo and Washington have regular opportunities to talk frankly and intensively about nuclear deterrence and disarmament, including during the Japan-US Extended Deterrence Dialogue.

Third, amid the rapidly increasing tension in the Korean Peninsula and incrementally growing concerns of further nuclear proliferation in other regions, Japan should continue its efforts to promote thorough implementation of nuclear non-proliferation obligations by the international community, including proponents of the ban treaty, as an important component towards a world without nuclear weapons. For example, achieving universality of the Additional Protocol to the IAEA Safeguards Agreements is vital for preventing further nuclear proliferation while its accession is not an obligation under the NPT or the nuclear ban treaty. In addition, what is currently much more urgent is strict implementation of the UN Security Council Resolutions vis-à-vis the North Korean nuclear issue in order to change its behaviour on nuclear and missile activities.



“... many non-nuclear NATO states are caught between their commitment to NATO and their domestic aspirations for nuclear disarmament.”

**Emil Dall**

# A Balancing Act: NATO States and the Nuclear Ban Treaty

**Emil Dall<sup>1</sup>**

NATO has long opposed the idea of a nuclear ban treaty. It argues that it is an unwelcome distraction from achieving long-term gradual disarmament through existing accords such as the Nuclear Non-Proliferation Treaty, and ignores the international security dynamics that necessitate the continued reliance on nuclear deterrence.

In an official statement released shortly after the Treaty on the Prohibition of Nuclear Weapons (TPNW) opened for signature on 20 September 2017, NATO asserted that the treaty not only “disregards the realities of the increasingly challenging international security environment” but risks undermining the Nuclear Non-Proliferation Treaty (NPT) and “creating divisions and divergences at a time when a unified approach ... is required more than ever”.<sup>2</sup>

Yet, NATO cannot ignore the treaty for two reasons. First, many non-nuclear NATO states are caught between their commitment to NATO and their domestic aspirations for nuclear disarmament. While these governments oppose the treaty on paper, it is important to acknowledge internal domestic debates, and the fact that many non-nuclear NATO states have interacted differently with the treaty over time. This might have implications for the wider Alliance, which will need to rethink how it will interact with the nuclear ban treaty in the longer term.

A second and perhaps more urgent reason is the Alliance’s interaction with non-NATO states that are strong supporters of the treaty yet maintain close defence and security cooperation with NATO. Sweden is a case in point. The country is closely integrated with NATO and its operations yet has embarked on a comprehensive review to determine whether it can sign up to the nuclear ban treaty. Others, including Austria and Ireland, have been at the forefront of the nuclear ban movement. Therefore, NATO could soon face the reality of a nuclear ban treaty in its immediate neighbourhood.

All in all, the nuclear ban treaty will be a difficult, but necessary, process for the Alliance to engage with. NATO member states must collectively decide how to balance their engagement with the treaty with a continued commitment to nuclear deterrence, and work to reduce the perceived divisions that it believes the nuclear ban treaty has created.

## *The ban treaty and NATO obligations*

NATO allies have very clear reasons for not being able to sign up to a nuclear ban treaty. Article 1(a) and (d) of the nuclear ban includes prohibitions on the development, production, testing, use or threat of use of nuclear weapons. These provisions not only apply to NATO states possessing nuclear weapons, but also to their allies. In any circumstance where nuclear-armed allies would plan to employ their nuclear weapons in defence of non-nuclear allies, the treaty would consider this unlawful. This would also constrain assurance or signalling missions carried out by nuclear-armed states on behalf of the wider Alliance. NATO states, by nature of their membership of an alliance where nuclear weapons form part of mutual defence, would therefore be in violation of the treaty. Article 1(e) further prohibits states to “assist, encourage

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1 A previous version of this chapter was published in July 2017 on the ELN website. It can be accessed here: <https://www.europeanleadershipnetwork.org/policy-brief/a-balancing-act/>

2 NATO Official Website, North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons, 2017 Available here: [https://www.nato.int/cps/en/natohq/news\\_146954.htm](https://www.nato.int/cps/en/natohq/news_146954.htm)

or induce, in any way” any other state to carry out the aforementioned activities. Many ban proponents interpret the core prohibitions in the treaty as including any form of military planning that includes nuclear weapons. Any NATO state would find it difficult to argue otherwise, should they wish to sign up to the treaty.

An additional provision is directed at those non-nuclear NATO states that host US nuclear weapons on their soil, which includes the Netherlands, Germany, Belgium, Italy and Turkey. Article 1(g) of the treaty prohibits “any stationing, installation or deployment of any nuclear weapons” in the territory of treaty signatories.

Therefore, as long as nuclear weapons remain central to NATO’s mission and defence, membership of the Alliance will be incompatible with the principles set out in the nuclear ban treaty.

Yet, NATO states have interacted with earlier processes that led to the ban treaty movement. The Humanitarian Initiative, the series of conferences between 2013 and 2014 set out to examine the humanitarian consequences of nuclear weapons use and to reframe disarmament discussions, enjoyed support from non-nuclear NATO states. 18 of the 24 non-nuclear NATO states attended all three conferences, and all attended at least two.<sup>3</sup> Although not indicative of support, even the United Kingdom and the United States attended the Initiative’s final conference in Vienna. During this time, non-nuclear NATO states also voted in support of resolutions in the UN First Committee referencing the Humanitarian Initiative.

Many however started to disengage from the initiative after it became clear that some states (including Austria and Ireland) were diverting the conversation away from a facts-based discussion over nuclear use and towards references to ban processes. During the second conference in 2014, references were repeatedly made to the successful processes that resulted in the

banning of landmines. The German delegation warned states that comparisons between nuclear weapons and landmines were not only unconvincing, they would also risk antagonizing important players central to disarmament discussions.<sup>4</sup> Unsurprisingly, as conversations over a nuclear ban intensified, NATO states that had previously felt comfortable taking part and supporting the processes, disengaged from the initiative.

### ***Difficult Conversations – The Case of Norway and the Netherlands***

Despite their disengagement from the nuclear ban process, many non-nuclear NATO states remain frustrated over the lack of progress made by the nuclear weapons states on nuclear disarmament. A case in point is Norway, which hosted the first Humanitarian Initiative conference in March 2013, and has long been at the forefront of international peace and disarmament issues. In 2011, before the conference, the then-Labour foreign minister stated that a “real total prohibition” on nuclear weapons was desired, although it is unclear through which process this would be achieved.<sup>5</sup>

Two developments caused the Norwegians to back away from initial aspirations. First, as the facts-based discussion which the Norwegians started in 2013 began to shift towards a political conversation around a nuclear ban, Norway had to reconsider its engagement with the initiative.

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4 Government of Germany, Statement by Germany during the Second Conference on the Humanitarian Impact of Nuclear Weapons, 13-14 February 2014 in Nayarit/Mexico, Available here: [http://www.atomwaffenfrei.de/fileadmin/user\\_upload/pdf\\_Dateien/German\\_Statement\\_Nayarit.pdf](http://www.atomwaffenfrei.de/fileadmin/user_upload/pdf_Dateien/German_Statement_Nayarit.pdf)

5 Government of Norway, Innstilling fra utenriks- og forsvarskomiteen om globale sikkerhetsutfordringer i utenrikspolitikken. Terrorisme, organisert kriminalitet, piratvirksomhet og sikkerhetsutfordringer i det digitale rom, 2016, Available here: <https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2015-2016/inns-201516-199/>

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3 Montenegro became a full member of NATO in 2017 and is not included in this figure.

Norway restated its commitment to nuclear disarmament as best achieved through a step-by-step process that enjoys the engagement and support of nuclear weapon states. Second and supporting this reconsideration was the election of the Conservative party to government in October 2013, which enabled those voices more critical of a nuclear ban to be the majority view. In 2015 the Norwegian government explained in a statement at the UN that the original “humanitarian initiative has now been undermined” by efforts to achieve a nuclear ban treaty, which it perceived as “further polarization” of the international community.<sup>6</sup> After the 2016 UN vote which mandated the beginning of negotiations on a nuclear ban treaty, the Norwegian government explained that although it voted no, it fully understood and sympathised with the ban initiative, acknowledging that “progress on nuclear disarmament has been too slow ... because nuclear-weapon states have failed to engage wholeheartedly and with genuine determination”.<sup>7</sup>

Norway has had a long-standing domestic discussion on the value of deterrence vis-a-vis disarmament commitments, and discussions on the nuclear ban treaty and the role taken by Norway has continued to take place in the Norwegian Parliament. These voices represent a minority of Norwegian politics, albeit a vocal one. In May of this year, all parties apart from the government agreed that “there must be an international convention that stipulates the conditions for a world free of nuclear weapons” and recommended

that the government take an active role in this.<sup>8</sup> In November 2015, a Labour party politician referred to the government’s decision to vote no to starting ban treaty negotiations as “a breach of Norway’s leadership role” in the work to ban nuclear weapons.<sup>9</sup> In addition, the Government Pension Fund of Norway, the sovereign wealth fund derived from the country’s oil revenues, has long maintained a policy to not invest in companies involved in the production of nuclear weapons, including BAE Systems, Boeing and Lockheed Martin.<sup>10</sup> Finally, while not indicative of Norwegian politics as a whole, the Norwegian Nobel Committee’s decision to award the Nobel Peace Prize to the International Campaign to Abolish Nuclear Weapons, a leading civil society force behind the nuclear ban treaty, will only add to this ongoing national debate on nuclear weapons.

Another example of where domestic politics have played a role in determining interaction with the nuclear ban treaty is the Netherlands. The Dutch government was the only NATO state present at the final round of treaty negotiations, after a vote in the Dutch parliament mandated the government to attend. The Dutch representative at the negotiations, Lise Gregoire, stated that whilst her delegation appreciated the “broad momentum for disarmament” the ban treaty has created

6 Norway 2015 L37 explanation of vote: [http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com15/eov/L37\\_Norway.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com15/eov/L37_Norway.pdf)

7 Explanation of Vote by Norway’s Special Representative for Disarmament Mr. Knut Langeland, Taking forward multilateral nuclear disarmament negotiations, 27 October 2016 Available here: [http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/eov/L41\\_Norway.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/eov/L41_Norway.pdf)

8 Government of Norway, Innstilling til Stortinget fra utenriks- og forsvarskomiteen Available here: <https://www.stortinget.no/globalassets/pdf/innstillinger/stortinget/2014-2015/inns-201415-296.pdf>

9 Government of Norway, Stortinget - Møte onsdag den 11. november 2015 kl. 10, Available here: <https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Stortinget/2015-2016/151111/ordinarsporretime/3/>

10 Norges Bank, OBSERVASJON OG UTELUKKELSE AV SELSKAPER, Norges Bank beslutter om selskaper skal utelukkes fra fondets investeringsunivers eller settes på en observasjonsliste. Available here: <https://www.nbim.no/no/ansvarlighet/utelukkelse-av-selskaper/>

it was “incompatible with NATO obligations”.<sup>11</sup> By attending, the government appears to have quelled any immediate domestic momentum towards supporting the ban.

However, the engagement with the ban treaty should be considered within the wider context of the stationing of US nuclear weapons in the Netherlands. Former Dutch Prime Minister Ruud Lubbers famously confirmed their presence in a 2013 interview, referring to them as “absolutely pointless”.<sup>12</sup> Other former government officials, including a former defence minister, have expressed support for their withdrawal.<sup>13</sup> The domestic debate around nuclear weapons remains largely on the fringes of political conversations. However, even if the nuclear ban treaty fades from public conversation, a debate over the basing of forward-deployed US nuclear weapons on Dutch territory could take its place. In fact, a decision to withdraw nuclear weapons could successfully steer attention away from the nuclear ban treaty and satisfy domestic commitments to nuclear disarmament, even as the country continues to enjoy protection under NATO’s extended nuclear umbrella.

The Dutch and the Norwegians are not being held back by their NATO obligations alone: NATO states believe in the continued value of nuclear deterrence and the security it provides. However, countries like Norway and the Netherlands, which

are unable or unwilling to endorse a ban treaty at this point could face difficult domestic debates after a nuclear ban treaty enters into force. Norway and the Netherlands, along with fellow non-nuclear NATO states, have already provided leadership in other disarmament fora, including disarmament verification work and treaties that form part of a step-by-step approach to disarmament. Pressure from the nuclear ban treaty could be diverted to achieve more in these processes. As domestic criticism will not go away these governments will have to ensure that nuclear deterrence, a core component of NATO’s defence posture, is partnered with continued progress on multilateral disarmament to manage this.

### ***Ban Treaty Neighbours – The Case of Sweden***

Crucial also is the interaction with non-NATO states which are strong supporters of the ban treaty. Austria, Ireland, Switzerland, Sweden and Liechtenstein all supported the final treaty text and their accession to the treaty may be imminent. Some of these countries work closely with NATO states on non-proliferation and disarmament issues in and outside of the NPT process, and have issued joint statements under the EU banner.<sup>14</sup>

Sweden has been a strong supporter of the nuclear ban treaty process, voted for the adoption of the final treaty text earlier this year, and has now announced the start of an inquiry to determine whether it can fully accede to the finished nuclear ban treaty. While Foreign Minister Margot Wallström has stated that she believes all of Sweden’s defence and security cooperation commitments with NATO can still be fulfilled after signing the ban treaty, clearly this aspect will form a crucial part of the inquiry.

Sweden is part of NATO’s Partnership for Peace programme, and has been described by the Alliance as one of its “most active partners and

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11 Official Website of the Government of the Kingdom of the Netherlands, available here: <https://permanentpresentations.nl/latest/news/07/07/explanation-of-vote-of-ambassador-lise-gregoire-on-the-draft-text-of-the-nuclear-ban-treaty>

12 BBC News, US nuclear bombs ‘based in Netherlands’ - ex-Dutch PM Lubbers, June 2013, Available here: <http://www.bbc.co.uk/news/world-europe-22840880>

13 Federation of American Scientists, B61-12 Nuclear Bomb Triggers Debate in the Netherlands, September 2013, Available here: <https://fas.org/blogs/security/2013/09/b61-12holland/>

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14 See Michal Smetana (2016), Stuck on disarmament: the European Union and the 2015 NPT Review Conference, *International Affairs* 92:1, 137-152



a valued contributor to NATO-led operations”.<sup>15</sup> Sweden’s integration includes regularly taking part in NATO exercises as well as inviting NATO neighbours to join Swedish military exercises. The recent Aurora 17 exercise held in September enjoyed the participation of several NATO partners including Denmark, Estonia, France, Lithuania, Norway and the US.<sup>16</sup>

In addition to exercises, Sweden’s military assets are designed or manufactured in close cooperation with or by NATO neighbours with a view to achieving interoperable platforms. US Secretary of Defense James Mattis reportedly warned the Swedish government that membership of the nuclear ban treaty would not only have an impact on these joint defence industrial programmes but also the country’s wider relations with the Alliance and any possibility of Sweden ever becoming a full NATO member.<sup>17</sup>

Despite the potential difficulties in continuing cooperation after signing a ban treaty, Sweden can reasonably argue that NATO’s Article 5 commitment whereby the Alliance would defend Allies under attack, with options including nuclear weapons, is the only part of NATO cooperation equivalent to “assist, encourage or induce” nuclear deterrence. If it does so, Sweden could “set a precedent for how Article 1(e) will be interpreted by signatories, and potentially tip the scales for [other] countries” wishing to sign up to the ban.<sup>18</sup>

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15 NATO Official Website, Relations with Sweden, Available here: [http://www.nato.int/cps/en/natohq/topics\\_52535.htm](http://www.nato.int/cps/en/natohq/topics_52535.htm)

16 Available here: <http://www.forsvarsmakten.se/en/activities/exercises/aurora-17/>

17 Defense News, Mattis reportedly threatens Swedish defense cooperation over nuclear treaty, September 2017, Available here: <https://www.defensenews.com/global/europe/2017/09/01/mattis-reportedly-threatens-swedish-defense-cooperation-over-nuclear-treaty/>

18 Available here: <https://rusi.org/commentary/sweden%E2%80%99s-choice-nato-or-nuclear-ban>

NATO will have to decide what a close military partnership with countries that sign the nuclear ban treaty looks like in practice. While NATO will benefit from sustaining such relationships for common defence purposes alone, value will also be derived more generally from continuing close engagement with ban signatories. For example, cooperating on disarmament initiatives will not only demonstrate that the Alliance is still committed to nuclear disarmament, but will also contribute towards reducing the divisions that NATO is concerned the nuclear ban treaty has created.

However, at the same time the Alliance may also wish to draw a line at certain elements of cooperation, so as not to motivate any of its own members to accede to the ban treaty. An urgent priority for the Alliance should therefore be to decide how it can have a productive engagement with a treaty it does not agree with, yet should not alienate.

### ***NATO engagement with the ban treaty***

With the ban now a reality, NATO Allies will have to factor the treaty into their conversation both with domestic audiences, and with states supporting the ban treaty, for whom the treaty is a victory and the culmination of decades of campaigning for a world free of nuclear weapons.

This makes the nuclear ban treaty a difficult balancing act for NATO states. So far, nuclear deterrence has been at the heart of NATO’s mission. Nuclear disarmament, while important, has been considered a priority only in the context of a favourable security environment. However if no progress is seen to be made towards a world free of nuclear weapons, domestic pressures could tip the scales in favour of disarmament concerns.

NATO should also urgently decide how it wishes to engage with the nuclear ban treaty as the treaty enters into force in countries around the world. If the Alliance is concerned that the nuclear ban treaty causes divisions amongst states, now is the time to work towards reducing those divisions. That is best done through constructive

“The purpose of the treaty is to challenge and destabilise the acceptability of nuclear violence, to create a ‘crisis of legitimacy’ for nuclear weapons and nuclear deterrence”

**Nick Ritchie**

# The Treaty on the Prohibition of Nuclear Weapons: delegitimising unacceptable weapons

## Dr Nick Ritchie

The *Treaty on the Prohibition of Nuclear Weapons* (TPNW) was negotiated to change the global political, legal, and normative context of nuclear weapons. The aim is to delegitimise nuclear weapons in the expectation that this will, over time, help foster an environment in which nuclear weapons can be eliminated as unacceptable instruments of statecraft.

Supporters of the humanitarian initiative and the TPNW do not claim the new treaty will ‘magically’ cause nuclear disarmament. They recognise that it must be complemented by many more steps and agreements, such as those outlined in the ‘Action Plan’ agreed at the 2010 NPT Review Conference. TPNW supporters do, however, argue that the global legal-normative context of nuclear weapons matters and that changing this context in support of nuclear disarmament is an essential process for enabling that disarmament to happen. The treaty’s supporters point out that a universal prohibition has often preceded the elimination of other unacceptable weapons, such as chemical weapons.<sup>1</sup>

## *Delegitimising nuclear weapons*

The post-Cold War nuclear disarmament process has largely centred on the five NPT nuclear weapon states and their efforts to reduce the value of nuclear weapons in terms of nuclear weapon numbers, types, and doctrine.<sup>2</sup> But this approach

does a number of things that underpin widespread frustration with the slow pace of disarmament among non-nuclear weapon states. First, whilst it accepts that the risk of nuclear violence must be taken seriously, the problem is framed not so much as the weapons themselves or the practice of nuclear deterrence, but who has them, in what numbers, and how they are configured. Second, it suggests the risk of nuclear violence can be safely managed for the foreseeable future through adjustments to nuclear posture, doctrine, consolidation of nuclear forces, and vigorous counter-proliferation. Third, it devolves agency for nuclear disarmament to the nuclear-armed states and their agendas and relationships. Finally, it leaves the logic and practice of nuclear deterrence undisturbed and leaves the legitimacy of nuclear weapons intact as far as the nuclear-armed states and their allies are concerned. We see this, for example, when nuclear weapon reductions are accompanied by statements that restate an unequivocal commitment to nuclear deterrence and the necessity of nuclear weapons for national security.

In contrast to this approach, a group of states responded with a new initiative to refocus disarmament diplomacy on the unacceptable humanitarian consequences of nuclear violence in the run up to the 2010 NPT Review Conference. They sought to actively reframe nuclear weapons as unacceptable and illegitimate irrespective of the perceived utility of the weapons by those that possess them (or indeed are ‘possessed’ by them).<sup>3</sup> This was based on an understanding

1 Beatrice Fihn, “The Logic of Banning Nuclear Weapons”, *Survival*, 59: 1, 2017, 43-50.

2 Nick Ritchie, “Valuing and Devaluing Nuclear Weapons,” *Contemporary Security Policy*, 34: 1, 2013, pp. 146–173.

3 I explore this further in “Legitimising and Delegitimising Nuclear Weapons”, in Borrie, J. and Caughley, T. *Viewing Nuclear Weapons Through a Humanitarian Lens* (Geneva: UNIDIR, 2014). On reframing see John Borrie, “Humanitarian reframing

that states are unlikely to relinquish nuclear weapons if they assign a high value to them and deem it legitimate to do so. Delegitimising nuclear weapons is therefore about challenging the international social acceptability of valuing nuclear weapons under any circumstances. It is a process of widening and deepening a collective normative censure of nuclear violence and diminishing nuclear weapons as a 'currency of power' in global politics.<sup>4</sup>

The key difference with the post-Cold War approach dominated by the nuclear weapon states is that the problem is explicitly the weapon rather than specific nuclear practices or specific nuclear actors. The threat to peace and security is not nuclear proliferation (which is a term that confines danger to the acquisition of nuclear weapons by additional states), the threat is the existence of the weapons themselves irrespective of who has them. Nuclear weapons become a collective international liability rather than an individual national asset.

Emphasising the delegitimation of nuclear weapons has also shifted disarmament diplomacy away from an exclusive focus on trying to change the policies of the nuclear-armed states and towards changing the normative international environment in which nuclear weapons and nuclear-armed states are embedded. In doing so, it has empowered a much broader community of states in disarmament diplomacy to change the international social structure of nuclear legitimacy and illegitimacy, and the relationship between nuclear-armed and non-nuclear-armed states.

This was cemented in the Austrian government's pledge in 2014 to "stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and

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of nuclear weapons and the logic of a ban", *International Affairs* 90: 3, 2014, pp. 625-46. doi: 10.1111/1468-2346.12130.

4 Anne Harrington, "Nuclear Weapons as the Currency of Power: Deconstructing the Fetishism of Force", *The Nonproliferation Review*, 16: 3, 2009.

associated risks" that was subsequently adopted as a UN General Assembly resolution.<sup>5</sup> This unacceptability is rooted in a collective moral revulsion and rejection of particular categories of violence, especially massive, inhumane and indiscriminate forms of violence.<sup>6</sup> This has been progressively codified in legal rules and normative principles governing the conduct of war, in particular international humanitarian law applicable in armed conflict, but also international human rights law and international environmental law.<sup>7</sup> According to these norms and rules, and by focusing on what nuclear weapons are rather than what purpose they are meant to serve, nuclear weapons are the worst of all.<sup>8</sup> This concern with the effects of nuclear detonations is not a new phenomenon but it has taken on new salience as nuclear disarmament processes have slowed and concern at the permanence of nuclear weapons has increased.

### *The effect of a prohibition treaty*

Advocates of a 'step-by-step' or 'building blocks'<sup>9</sup>

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5 United Nations General Assembly, "Humanitarian Pledge for the Prohibition and Elimination of Nuclear Weapons", A/RES/70/48, 7 December 2015.

6 See Ethan Nadelman, "Global Prohibition Regimes: The Evolution of Norms in International Society", *International Organization*, 44: 4, 1990, pp. 479-526.

7 For an overview see Randy Rydell, "The United Nations and a Humanitarian Approach to Nuclear Disarmament" in *Nuclear Abolition Forum*, No. 1, October 2011.

8 See "Working Towards the Elimination of Nuclear Weapons", Draft Resolution and Background Document CD/11/4.1, Council of Delegates of the International Red Cross and Red Crescent Movement, Geneva, 26 September 2011, p. 10.

9 "A progressive approach to a world free of nuclear weapons: revisiting the building-blocks paradigm", working paper submitted by 18 US allies to the 2016 Open-Ended Working Group on Taking Forward Multilateral Nuclear Disarmament, AC.286/WP.9, Geneva, 24 February 2016.

approach to nuclear disarmament argued that a TPNW was an unnecessary distraction from other important measures such as a Fissile Material (Cut-off) Treaty, a diplomatic insurgency that would imperil the NPT, or a deliberately divisive, exclusive and therefore invalid diplomatic process.<sup>10</sup> A number of commentators also criticised the treaty as ineffective after it was finalised. Scott Sagan and Benjamin Valentino, for example, castigated the treaty as a “divisive and ultimately ineffective ban”.<sup>11</sup>

These concerns have been addressed elsewhere,<sup>12</sup> but a number of points can be made here. First, the prohibition and other important disarmament measures such as entry into force of the CTBT, negotiation of an FMCT, nuclear stockpile reductions, disarmament verification research, and other ‘building blocks’ are not mutually exclusive. Political work is required on both physical constraints (on stockpiles, testing, fissile material production, deployments) and normative and legal constraints (on declaratory policy, use, possession). Focussing on delegitimising nuclear weapons does not diminish the importance of such steps, but neither does it restrict “effective measures” on nuclear disarmament under the NPT’s Article VI to the agency of those that have nuclear weapons.<sup>13</sup> Delegitimising nuclear

weapons through the TPNW certainly changes the context of future ‘steps’, indeed that is the point, but it is not incompatible with them.<sup>14</sup>

Claims that the prohibition treaty is a threat to the NPT tend to mask a deeper opposition to the delegitimation of nuclear weapons because those weapons and the practice of nuclear deterrence are still accepted as legitimate. It is resistance to a process of delegitimation that appears to have led nuclear-armed states to largely exclude themselves from the humanitarian impact of nuclear weapons conferences, the 2013 and 2016 Open-Ended Working Groups, and the negotiating sessions of the TPNW. Moreover, claims that the treaty is divisive miss the point that it is a symptom of deep and growing division within the NPT, not a cause of it.

Arguments that the TPNW will be ineffective are also unwarranted and reflect a limited understanding of the treaty’s purpose and the humanitarian initiative. It is well understood that the effect of the treaty will be indirect and long-term. The treaty’s supporters do not claim it to be a disarmament panacea. They understand that they are working against powerful vested interests in nuclear weapons, and that they are a relatively disempowered non-nuclear many compared to the far more powerful nuclear few. It remains to be seen whether the treaty’s supporters can translate its norms into wider political effects

10 For example, Australian Foreign Minister Julie Bishop, “We Must Engage, not Enrage Nuclear Countries,” *Sydney Morning Herald*, 14 February 2014.

11 Scott Sagan and Benjamin Valentino, “The nuclear weapons ban treaty: Opportunities lost”, *Bulletin of the Atomic Scientists*, 16 July 2017. Available at <<http://thebulletin.org/nuclear-weapons-ban-treaty-opportunities-lost10955>>. My response is available at <<http://thebulletin.org/commentary/rebuttal-critics-nuclear-weapon-ban-treaty10967>>.

12 See the detailed discussion in John Borrie, Tim Caughley, Torbjørn Hugo Graff, Magnus Lovøld, Gru Nystuen, and Camilla Waszink, *A Prohibition on Nuclear Weapons: A Guide to the Issues* (Geneva: UNIDIR and ILPI, February 2016).

13 See Working Paper on “Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons” submitted

by the New Agenda Coalition to the Preparatory Conference for 2010/5 NPT Review Conference, NPT/CONF.2015/PC.III/WP.18, 2 April 2014; and Tim Caughley, “Analysing Effective Measures: Options for Multilateral Nuclear Disarmament and Implementation of NPT Article VI”, ILPI-UNIDIR NPT Review Conference Series Paper No. 3, February 2015.

14 See “The ‘Legal Gap’: Recommendations to the Open-ended Working Group on taking forward nuclear disarmament negotiations”, working paper submitted 125 signatories of the ‘Austrian Pledge’ to the 2016 Open-Ended Working Group on Taking Forward Multilateral Nuclear Disarmament, AC.286/WP.36, Geneva, 4 May 2016.

that are consistent with the treaty, but it cannot be claimed in advance that the treaty will be ineffective.

History shows that states that initially resist an international norm can be socialised into the new legal-normative order over time – termination of the slave trade and colonialism being the two most important examples. Experience also shows that international norms can affect the behaviour of states that do not join the associated regimes, such as the ban on anti-personnel land mines, and that norms developed without the major powers can be effective.<sup>15</sup> As Costa Rica and Malaysia argued in a 2016 working paper: “the experience with biological weapons and anti-personnel landmines suggests that even a treaty with limited membership and little content beyond a straightforward prohibition could be highly effective in developing and strengthening norms against nuclear weapons. The fact that some nuclear-armed states explicitly oppose such a treaty is further evidence of its likely effectiveness as a means of norm-building.”<sup>16</sup>

Perhaps more importantly, though, is the question ‘if not this treaty now, then what?’. Critics imply that the alternatives for the treaty’s supporters primarily from the global South are to quietly accept a permanently nuclear-armed world and the dangers of catastrophic harm that go with it, or to advocate only those changes in nuclear practices that leave the logic of deterrence undisturbed and the legitimacy of nuclear violence intact. Or perhaps they should just trust the nuclear-armed to manage their arsenals ‘responsibly’ in perpetuity. The implication is that the 122 states

that voted in favour of the treaty at the UN in July 2017 are not allowed to exercise their collective will through the UN to try and shift the context and debate on such a difficult transnational problem that affects them just as much as it affects the nuclear-armed. The compelling evidence of the disastrous global climatic effects of a ‘limited’ nuclear war that would put over a billion people at risk of starvation and threaten the collapse of global food supplies testifies to that.<sup>17</sup>

### *The broader context*

This leads us to the broader context of the TPNW that cannot be ignored. The transnational advocacy network of states, inter-governmental organisations, and civil society organisations propelling the humanitarian initiative has articulated a different view of national and global security.<sup>18</sup> It has challenged the state-centric, militarised and patriarchal security paradigm that generates and legitimises the doctrine of nuclear deterrence. Instead, it has privileged collective ideas of security rooted in justice, anti-colonialism, development, human rights, and environmental stewardship.<sup>19</sup> It has connected nuclear power structures, inequalities, and violence with a wider

15 Adam Bower, “Norms Without the Great Powers: International Law, Nested Social Structures, and the Ban on Antipersonnel Mines”, *International Studies Quarterly* 17: 3, 2015, pp. 347–73.

16 “Developing and strengthening norms for attaining and maintaining a world without nuclear weapons” submitted by Costa Rica and Malaysia to the 2016 UN Open Ended Working Group on Taking Forward Multilateral Nuclear Disarmament Negotiations, Geneva, A/AC.286/WP.13, 2016, p. 4.

17 See, for example, International Physicians for the Prevention of Nuclear War, *Zero is the Only Option: Four Medical and Environmental Cases for Eradicating Nuclear Weapons*, 2011; Ira Helfand, *Nuclear Famine: A Billion People at Risk*, International Physicians for the Prevention of Nuclear War and Physicians for Social Responsibility, 2012; Owen Toon, Alan Robock and Richard Turco, “Environmental Consequences of Nuclear War”, *Physics Today*, December 2008, pp. 37-42; Matt Mills, Owen Toon, Richard Turco, Douglas Kinnison and Rolando Garcia, “Massive Global Ozone Loss Predicted Following Regional Nuclear Conflict”, *Proceedings of the National Academy of Sciences*,

18 See Margaret Keck and Kathryn Sikkink, “Transnational Advocacy Networks in International and Regional Politics”, *International Social Science Journal* 51: 159, 1999, pp. 89-101.

19 See “Nuclear disarmament in context – a global governance issue”, working paper submitted Ireland



set of global structural hierarchies, inequalities, and violent practices and should be understood in this wider context. It is no coincidence that the humanitarian initiative and TPNW have been championed by states of the 'global South' in Africa, Asia and South America. The views of many of these states on global nuclear politics and disarmament is informed by a post-colonial worldview in which ideas of 'nuclear justice' are central.<sup>20</sup> This has been articulated by the Non-Aligned Movement since the 1960s but largely ignored in Western nuclear discourse.<sup>21</sup>

The humanitarian initiative and the ban treaty have challenged the existence of nuclear weapons and the practice of nuclear deterrence in terms of international humanitarian law, but they have also challenged nuclear deterrence as a symptom of a security paradigm that is deeply flawed. In doing so, the initiative has not only reframed nuclear weapons as illegitimate and disarmament as a humanitarian imperative, but embedded nuclear disarmament in wider discourses of collective transnational security. The 'realist' security paradigm that legitimatises nuclear deterrence is seen as woefully inadequate in the face of transnational global challenges. In particular, it offers little in response to the catastrophic ecological crises that will define the 21<sup>st</sup> century and our conceptions and experiences

of security.<sup>22</sup> Nuclear weapons are understood through this lens as harbingers of extreme violence and environmental disaster whose non-use cannot be assured, yet simply must be and can only be through their elimination. As John Carlson, formerly of the Australian Ministry of Foreign Affairs and the IAEA, put it, "A treaty which reinforces the stigmatization of nuclear weapons and establishes a framework for further steps towards disarmament seems an excellent place to start."<sup>23</sup>

## Conclusion

To conclude, the humanitarian initiative was born out of exasperation with the slow pace of nuclear disarmament, the continuing dangers of a nuclear-armed world, and a seemingly implacable commitment to the logic of nuclear deterrence by the nuclear-armed. Its core theme of delegitimising and stigmatising nuclear weapons coalesced around the idea of a nuclear weapons prohibition treaty. The purpose of the treaty is to challenge and destabilise the acceptability of nuclear violence, to create a 'crisis of legitimacy'<sup>24</sup> for nuclear weapons and nuclear deterrence, and thereby precipitate change in the nuclear policies and practices of the nuclear-armed and their nuclear supporters, change that otherwise did not seem forthcoming. Whether that change is possible remains to be seen but, as Sir Michael Quinlan argued in 2009, we cannot live with a system of security based on "the threat of colossal disaster" for the rest of human history.

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to the 2016 Open-Ended Working Group on Taking Forward Multilateral Nuclear Disarmament, AC.286/WP.35, Geneva, 3 May 2016. See also John Borrie and Tim Caughley, *An Illusion of Safety: Challenges of Nuclear Weapon Detonations for United Nations Humanitarian Coordination and Response* (Geneva: UNIDIR, 2014).

20 See Shampa Biswas, *Nuclear Desire: Power and the Postcolonial Nuclear Order* (Minneapolis: University of Minnesota Press, 2014) and Harald Muller, "Between power and justice: current problems and perspectives of the NPT regime", *Strategic Analysis* 34: 2, 2010, pp. 189-201.

21 Dan Plesch, "The South and disarmament at the UN", *Third World Quarterly* 37: 7, 2010, pp. 1203-18. doi: 10.1080/01436597.2016.1154435.

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22 See Naomi Klein, *This Changes Everything: Capitalism vs. The Climate* (New York: Simon and Schuster, 2014), and Anthony Burke, Audra Mitchell, Simon Dalby, Stephanie Fishel and Daniel Levine, "Planet Politics: A Manifesto from the End of IR", *Millennium: Journal of International Studies*

23 John Carlson, "A nuclear weapons ban – finding common ground", *Asia Pacific Leadership Network for Nuclear Non-Proliferation and Disarmament, Policy Brief* Np. 30. February 2017, p. 7.

24 Christian Reus-Smit, "International Crises of Legitimacy", *International Politics* 44: 1, 2007.



“The oxygen feeding the nuclear ban treaty is the stalemate in traditional arms control and disarmament and the defence of extended deterrence should be combined with efforts to move this process along.”

**Matthew Harries**

# The ban treaty and the future of US extended nuclear deterrence arrangements

**Dr Matthew Harries<sup>1</sup>**

Extended nuclear deterrence is fundamental to the design of the existing non-proliferation architecture. The non-nuclear-armed members of NATO, Japan, South Korea and Australia are all non-nuclear-weapon states parties to the Nuclear Non-Proliferation Treaty (NPT) in good standing with their non-proliferation obligations.<sup>2</sup> Nothing in the NPT forbids either extended nuclear deterrence or NATO nuclear sharing.<sup>3</sup> In fact,

extended nuclear deterrence guarantees played a crucial role in persuading several American allies to join the NPT and remain non-nuclear. Although they have different perspectives, countries under the United States' nuclear umbrella have tended to adopt a moderate stance, supportive of disarmament efforts but falling well short of the uncompromising advocacy of the non-aligned movement.<sup>4</sup> The ban treaty marks an attempt to end this balancing act.<sup>5</sup>

The ban treaty goes much further than simply prohibiting nuclear weapons themselves: it targets deterrence, not just possession or use; it explicitly prohibits nuclear sharing; and it implicitly prohibits a state party from receiving any kind of nuclear deterrence guarantee. It therefore forces umbrella states to pick a side on an issue that they would prefer stayed under the radar. This might actually consolidate, rather than undermine, their support for nuclear deterrence. Yet rejecting the ban treaty outright is politically uncomfortable for many umbrella states, for a variety of reasons, including a general desire to conform to international norms, the opacity and

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1 The author would like to thank Heather Williams, Gaukhar Mukhatzhanova, Andrea Berger, Beatrice Fihn and Brad Roberts for providing helpful comments on the theme of this chapter.

2 This chapter limits itself to considering those states covered by extended nuclear deterrence guarantees from the United States, and does not assess the implications for Russian extended deterrence to the members of the Collective Security Treaty Organisation (CSTO).

3 Quite the opposite: in the mid-1960s, serious negotiations on the NPT could only begin once the United States and Soviet Union had hammered out an agreement on non-proliferation provisions (NPT Articles I and II) that left NATO nuclear sharing intact while killing off plans for a future multilateral NATO nuclear force. See William Alberque, 'The NPT and the Origins of NATO's Nuclear Sharing', IFRI Proliferation Paper, February 2017, [https://www.ifri.org/sites/default/files/atoms/files/alberque\\_npt\\_origins\\_nato\\_nuclear\\_2017.pdf](https://www.ifri.org/sites/default/files/atoms/files/alberque_npt_origins_nato_nuclear_2017.pdf); Hal Brands, 'Non-Proliferation and the Dynamics of the Middle Cold War: The Superpowers, the MLF, and the NPT', *Cold War History*, vol. 7, no. 3, 2007; George Bunn, *Arms Control by Committee: Managing Negotiations With the Russians*

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(Stanford University Press, 1992), chapter 4; and Matthew Harries, 'The Role of Article VI in Debates about the Non-Proliferation Treaty', PhD thesis, King's College London, 2014, chapters 1 and 2.

4 For example, Australia, Canada, Germany, Japan, Poland and Turkey are members of the Non-Proliferation and Disarmament Initiative, a ministerial-level group formed in 2010 with the intention of bridging NPT divisions.

5 See Heather Williams, 'Does the fight over a nuclear weapons ban threaten global stability?', *Bulletin of the Atomic Scientists*, 9 February 2017, <http://thebulletin.org/does-fight-over-nuclear-weapons-ban-threaten-global-stability10500>.

sensitivity surrounding nuclear weapons, and the fact that these are democratic states and thus responsive (albeit to varying degrees) to public pressure.<sup>6</sup>

### *Treaty analysis*

The text of the ban treaty clearly targets the concept and practice of extended nuclear deterrence. Four aspects of the treaty are of particular significance.

#### *Preambular language rejecting nuclear use under any circumstances*

Although not operative language, the preamble demonstrates the treaty's guiding intent. 'Any use' of nuclear weapons is held to have 'catastrophic humanitarian consequences'; to be 'abhorrent to the principles of humanity and the dictates of public conscience'; and to be 'contrary to ... the principles and rules of international humanitarian law'. This leaves no room for nuclear deterrence—including extended nuclear deterrence—because it rules out even retaliatory use, no matter how dire the circumstances. It also goes beyond the 1996 International Court of Justice (ICJ) advisory opinion, which was not able to conclude whether nuclear use would be lawful in an extreme circumstance of self-defence.<sup>7</sup>

6 I have argued elsewhere that the ban treaty's disproportionate impact on democratic states is a shortcoming; one supporter of the ban responded that this is simply a side-effect of a normative prohibition. See Matthew Harries, 'The real problem with a nuclear ban treaty', Carnegie Endowment for International Peace, 15 March 2017, <http://carnegieendowment.org/2017/03/15/real-problem-with-nuclear-ban-treaty-pub-68286>; and Nick Ritchie, 'The real "problem" with a nuclear ban treaty? It challenges the status quo', Carnegie Endowment for International Peace, 3 April 2017, <http://carnegieendowment.org/2017/04/03/real-problem-with-ban-treaty-it-challenges-status-quo-pub-68510>.

7 'Legality of the threat or use of nuclear weapons', International Court of Justice advisory opinion, 8 July

#### *Prohibition on the threat of use of nuclear weapons*

A specific prohibition on threat of use goes beyond the existing prohibition on threats of military force under the UN Charter.<sup>8</sup> Such a prohibition was not included in comparable treaties banning chemical and biological weapons, landmines and cluster munitions.<sup>9</sup> Taken in combination with the preamble, the clear intent of Article 1.1(d) of the ban appears to be to prohibit nuclear deterrence, because deterrence relies on the threat of use, even if the intention is for the threat not to be realised. Advocates for a nuclear ban treaty had argued for its inclusion on precisely these grounds.<sup>10</sup> It follows that extended deterrence is covered by such a prohibition, both for the state making the guarantee, and—via the prohibition on assistance, inducement or encouragement described below—the umbrella state.

#### *Prohibition on nuclear sharing*

In Article 1.1 paragraphs a–c, the ban treaty uses language drawn and adapted from the NPT. However, the ban discards the compromise

1996, paragraph 105.2(E), <http://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>.

8 Gaukhar Mukhatzhanova, 'The Nuclear Weapons Prohibition Treaty: Negotiations and Beyond', Arms Control Today, September 2017, <https://www.armscontrol.org/act/2017-09/features/nuclear-weapons-prohibition-treaty-negotiations-beyond>.

9 See Hirofumi Tosaki and Nobuo Hayashi, 'Implications of a Nuclear Weapons Ban Treaty for Japan', International Law and Policy Institute, November 2016, p. 19, <http://nwp.ilpi.org/wp-content/uploads/2016/11/083-Implications-of-a-prohibition-for-Japan.pdf>.

10 See, for example, Ray Acheson, 'Banning Nuclear Weapons: Principles and Elements for a Legally Binding Instrument', Women's International League for Peace and Freedom, March 2017, p. 14, <http://wilpf.org/wp-content/uploads/2017/03/Banning-Nuclear-Weapons-Principles-and-Elements-for-a-Legally-Binding-Instrument.pdf>.

on which that language was based, and, in Article 1.1(g), outlaws 'stationing, installation or deployment' of another country's nuclear weapons on one's own territory. This is, in effect, a specific prohibition on NATO nuclear sharing. It would also prohibit the redeployment of US tactical nuclear weapons to South Korea.

*Prohibition on assistance, encouragement or inducement*

Taken in combination with the prohibition on threat of use, Article 1.1(e) is the key provision that widens the aim of the ban treaty to include not just possessor or host states, but also those which rely on extended nuclear deterrence—whether or not any nuclear hardware is involved. Just as the prohibition on threat of use takes the ban treaty beyond the UN Charter, this prohibition on assistance, encouragement or inducement takes the ban treaty beyond the rules of the Articles on State Responsibility, by prohibiting assistance to any state in violating the ban, whether that state is a party to the ban or not.<sup>11</sup>

In other words, even if the nuclear powers do not join the ban treaty, any non-nuclear-weapon state that does join will be prohibited from assisting, encouraging or inducing a nuclear-armed state to violate the treaty, including the prohibition on threat of use. This must surely include any reliance on an extended nuclear deterrence guarantee, as well as support to extended nuclear deterrence operations.<sup>12</sup>

There are two notable omissions from the

11 John Borrie et al., 'A Prohibition on Nuclear Weapons: A Guide to the Issues', UNIDIR, February 2016, pp. 35–7, <http://unidir.org/files/publications/pdfs/a-prohibition-on-nuclear-weapons-a-guide-to-the-issues-en-647.pdf>.

12 See Borrie et al., p. 37; Yasmin Afina et al., 'Negotiation of a Nuclear Weapons Prohibition Treaty: Nuts and Bolts of the Ban / The New Treaty: Taking Stock', UNIDIR, p. 9, <http://www.unidir.org/files/publications/pdfs/-en-687.pdf>; and Kjølsv Egeland, 'A Nuclear Ban Treaty and Relations with Non-Party

treaty text: a prohibition on transit of nuclear weapons through national jurisdiction, and a prohibition on nuclear-weapons financing. The former is particularly significant, because an explicit provision on transit could have affected extended deterrence by making it harder for the United States to work with ban-signatory military partners, including by requiring such partners to prohibit port calls by ballistic-missile submarines and overflight by nuclear-capable aircraft.<sup>13</sup> Some states declared that they would interpret Article 1.1(e) on assistance to cover transit, but this is unlikely to gain the agreement of all state parties to the ban treaty.<sup>14</sup>

## **Implications**

The future effect of the ban treaty can be assessed via two questions: firstly, what would be the effect of a nuclear-umbrella state signing the treaty? And if no umbrella state does sign for the time being, as appears likely, what would be the effects on extended deterrence of other states joining and implementing the ban?

*Effects of signature by an umbrella state*

As a matter of politics, if not law, it would be untenable for a state to join the ban treaty and continue to accept an extended nuclear

States', 6 March 2017, p. 4, <http://www.gcsp.ch/download/6683/157410>.

13 See Sharon Squassoni, 'A controversial ban and the long game to delegitimize nuclear weapons', Bulletin of the Atomic Scientists, 10 July 2017, <http://thebulletin.org/controversial-ban-and-long-game-delegitimize-nuclear-weapons10934>; and Mukhatzhanova, 'The Nuclear Weapons Prohibition Treaty: Negotiations and Beyond'.

14 See Mukhatzhanova, 'The Nuclear Weapons Prohibition Treaty: Negotiations and Beyond'; and Alyn Ware, 'The ban treaty, transit and national implementation: Drawing on the Aotearoa-New Zealand experience', Aotearoa Lawyers for Peace, <http://www.unfoldzero.org/wp-content/uploads/The-ban-treaty-transit-and-national-implementation.pdf>.

deterrence guarantee. Even if a legal case could be made, it is hard to see any political benefit for a state attempting to manage the contradiction. Joining the ban treaty would be a statement that an umbrella state had decided to reject nuclear weapons in their entirety, including via deterrent threats of nuclear retaliation by another country. This would mean a decision either to 'denuclearise' extended deterrence—that is, to rely on conventional extended deterrence alone—or to fully break from military cooperation with a nuclear power.<sup>15</sup> Insisting that state parties are obliged to follow the latter, more drastic course, would be stretching the language of the treaty a long way, but it is not impossible to imagine some countries making that argument. Here, it is notable that the ban does not include an 'interoperability' provision similar to the Convention on Cluster Munitions, to make clear that non-nuclear-related military cooperation with a nuclear-armed power is permitted.<sup>16</sup>

Even the narrower interpretation, however, would require very significant changes from the departing umbrella state. Japan, South Korea and Australia would have to forswear their extended nuclear deterrence guarantees and cease assistance to operations relating to nuclear deterrence of North Korea and China. This would not only mean removing language relating to extended nuclear

deterrence from defence white papers and national-security strategies, and ceasing nuclear aspects of extended-deterrence dialogues with the US; it could also mean ending support to US deployment of dual-capable strategic assets, whether nuclear-armed or not. (South Korea, for example, has permitted overflight of B-2 and B52 bombers in shows of force against North Korea, and provided fighter-jet support.<sup>17</sup>) It could also involve halting or altering nuclear-related cooperation via shared assets such as Australia's Pine Gap base.<sup>18</sup>

The case of NATO is in some ways even more complex, both because decisions taken by one ally affect the others, and because NATO's policy and institutional arrangements relating to nuclear weapons are more elaborate and explicit. NATO declaratory policy contains a number of references to nuclear weapons, including the statement that 'as long as nuclear weapons exist, NATO will remain a nuclear alliance'.<sup>19</sup> It also refers not only to forward-deployed US nuclear weapons but on 'capabilities and infrastructure' provided by members of the NPG, as well as a commitment

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15 Which of these two options is legally demanded by the treaty is a question for debate. A maximalist interpretation of the treaty might assert that any military cooperation with a nuclear state or nuclear alliance would be prohibited, even if it did not include any acceptance of a nuclear guarantee or material support for nuclear planning, threats or use. The United States has used this possibility in warning partner states not to sign the ban. See, for example, 'US Defence Secretary Mattis warned Sweden not to sign anti-nuclear weapons treaty: report', *The Local*, 30 August 2017, <https://www.thelocal.se/20170830/us-defence-secretary-mattis-warned-sweden-not-to-sign-anti-nuclear-weapons-treaty-report>.

16 Tosaki and Hayashi, 'Implications of a Nuclear Weapons Ban Treaty for Japan', pp. 17–18

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17 See, for example, 'U.S. flies B-52 over South Korea after North's nuclear test', *Reuters*, 11 January 2016, <http://www.reuters.com/article/us-northkorea-nuclear/u-s-flies-b-52-over-south-korea-after-norths-nuclear-test-idUSKCN0UN0Y420160111>; and 'U.S. says it sent B-2 stealth bombers over South Korea', *CNN*, 28 March 2013, <http://edition.cnn.com/2013/03/28/world/asia/korea-us-b2-flights/index.html>.

18 Given the inherent difficulty in verifying these changes, and indeed the absence of any suggestion in the ban treaty of how such verification would take place, a state could sign the ban and simply violate it in this way in secret. The political risks of doing so would be severe, however, and it is hard to see why a state would be motivated to reject US extended nuclear deterrence in public and continue to materially support it in private.

19 NATO, Warsaw Summit Communiqué, 9 July 2016, paragraph 53, [http://www.nato.int/cps/en/natohq/official\\_texts\\_133169.htm](http://www.nato.int/cps/en/natohq/official_texts_133169.htm)

to modernising 'all components of NATO's nuclear deterrent', and ensuring the 'broadest possible participation' of allies in nuclear burden-sharing.<sup>20</sup>

A NATO signatory to the ban treaty would be faced with an onerous series of steps to give even a basic appearance of compliance. It would have to leave the Nuclear Planning Group. It would have to declare that it rejected any use or threat of use of nuclear weapons in its defence by the Alliance. It would have to explicitly disassociate itself with current NATO declaratory policy, and lobby to either to remove all references to nuclear weapons in future consensus NATO statements, or caveat them to exclude itself.<sup>21</sup> If the state in question was one of the five which hosts US B-61 gravity bombs, it would have to publicly declare their presence—breaking long-standing NATO policy—and then ask the US to remove them by a deadline set by members of the ban treaty.

NATO sets great value in unity, and there is no real precedent for states taking such steps. When some hosts of US nuclear weapons were pressing for their removal in 2009–10, unity won the day, with the alliance deciding that the weapons should only be withdrawn by collective agreement. This remains the explanation given by states such as the Netherlands, where domestic opposition to nuclear weapons is strong, for not unilaterally expelling the US B-61s. Comparisons to nuclear-armed France's non-membership of the NPG are spurious;<sup>22</sup> comparisons to Iceland and Lithuania,<sup>23</sup> which do not allow nuclear weapons onto their soil, are more relevant but still inadequate. A ban signatory would either

have to explicitly disassociate itself from central tenets of NATO policy, or seek to change them. Either option would be greeted with vigorous opposition from several allies, and would risk a highly damaging split. No NATO country currently appears willing to bear such political costs. On the opening of the ban treaty for signature the North Atlantic Council released a statement rejecting the ban, denying any change in Allied nations' legal obligations arising from it, and denying that the treaty contributes to the development of customary international law.<sup>24</sup>

The broader political effects on extended deterrence of signature by an umbrella state could be significant. In the NATO context, an ugly argument between allies could be interpreted by Russia as evidence that the Article V commitment to defend a NATO state under attack would not hold in time of crisis. In the Northeast Asian context, rejection of the US nuclear umbrella could leave states more susceptible to North Korean nuclear blackmail, and would likely be taken by China as an opportunity to peel allies away from the US and further into its own orbit.

#### *Effects of signature by third parties*

If no umbrella states sign the treaty, could it still affect extended deterrence through its implementation by other countries? The omission of explicit prohibitions on transit and financing is likely to considerably reduce the practical impact of large numbers of states joining the treaty. This is not to say it removes the impact entirely. Activists are likely to use the ban as the basis for campaigns for states to divest from nuclear-weapons-related investments, and to lead boycotts of companies associated with nuclear-weapons supply chains. However, it is unlikely that a state party will have both the political intent and sufficient material connection to nuclear-weapons infrastructure to have a fatal impact on extended nuclear deterrence.

20 Ibid.

21 A partial caveat could be provided by the footnote on policy that limits some nuclear language to members of the NPG—but this does not currently apply to broader language on the role of nuclear weapons in NATO's deterrence and defence posture.

22 See, for example, Stein-Ivar Lothe Eide, 'A Ban on Nuclear Weapons: What's In It for NATO?', International Law and Policy Institute, February 2014, pp. 7 and 10.

23 Eide, 'A Ban on Nuclear Weapons: What's In It for NATO?', pp. 6–7.

24 'North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons', 20 September 2017, [http://www.nato.int/cps/en/natohq/news\\_146954.htm](http://www.nato.int/cps/en/natohq/news_146954.htm).



Instead, the long-term challenge comes from the potential impacts of the treaty on the perceived legitimacy of nuclear weapons. The umbrella states' balancing act is not easy to maintain. Japan, for obvious reasons of national heritage, is an enthusiastic actor in nuclear disarmament diplomacy; yet the demands of alliance with the United States and extended nuclear deterrence led Japan to violate its own famous 'three non-nuclear principles' by permitting the transit of US nuclear weapons.<sup>25</sup> Japanese diplomats are aware that they are treading a fine line. Russia's invasion of Ukraine may have made it easier for NATO to find a pro-nuclear consensus, but both the introduction of modernised B-61 gravity bombs, and the impending national decisions by the five states that currently host US nuclear weapons on whether to procure new dual-capable aircraft to deliver them, will likely reopen old debates. Moreover, in recent years, Russia has made increasingly strident, if disingenuous, charges that NATO nuclear sharing violates the NPT. The combination of Russian mischief and ban-enabled grandstanding could prove troublesome in the next NPT review cycle. The existence of the ban treaty provides anti-nuclear campaigners in the host countries with an extra political tool, and even if host states do not sign the ban, they might find it more difficult to justify the continued presence of nuclear weapons on home soil.

Predicting the normative success of any treaty is difficult. The first truly crucial NPT ratification by a near-nuclear state was West Germany in 1975, seven years after the treaty opened for signature. The fact that it currently looks unlikely that an umbrella state will sign the ban treaty does not mean that this will always be true. In the meantime, positions can change. Australia's Labor Party, for example, included support for the negotiation of a nuclear ban treaty in its 2016 national platform.<sup>26</sup> The balance of international opinion could also be tipped were the ban treaty to be used as the basis for reconsidering the 1996

ICJ advisory opinion, this time that the treaty's existence demonstrated a new consensus that use under any circumstances would be unlawful.

### *The road ahead*

The ban treaty, in possession of a simple moral argument and with the wind in its sails, will not be easy to ignore. Yet umbrella states have little option but to try to maintain their balancing act, even in the face of this new political challenge. The NPT, for all its flaws, has helped achieve a measure of nuclear order, and must be defended. Extended nuclear deterrence, although politically difficult, is vastly less destabilising than nuclear proliferation by the allies. And a process of incremental, verifiable and enforceable agreements—however tortuous—is still the only credible path to global nuclear disarmament. The seductive clarity of prohibition is no substitute for agreements which bind the nuclear-armed states and which can be made to stick.

*"The ban treaty, in possession of a simple moral argument and with the wind in its sails, will not be easy to ignore. Yet umbrella states have little option but to try to maintain their balancing act, even in the face of this new political challenge. The NPT, for all its flaws, has helped achieve a measure of nuclear order, and must be defended."*

The umbrella states' task will have to be approached more directly than before, however. The ban's supporters are well aware that extended nuclear deterrence is a touchy political subject. Being called a 'weasel' stings, and the charge of hypocrisy will remain effective as long as umbrella

25 See Mark Fitzpatrick, *Asia's Latent Nuclear Powers* (Routledge for the IISS, 2016), chapter 2.

26 Australian Labor Party, 'A Smart, Modern, Fair Australia', 2016 National Platform, paragraph 87,

[https://cdn.australianlabor.com.au/documents/ALP\\_National\\_Platform.pdf](https://cdn.australianlabor.com.au/documents/ALP_National_Platform.pdf).



states remain reluctant to defend extended nuclear deterrence openly and explicitly.<sup>27</sup> Governments of umbrella states that wish to maintain extended deterrence should articulate a clear rationale for why they believe it is necessary.

In the current bleak security environment, this should not be impossible. After the annexation of Crimea, and given Russia's willingness to use nuclear threats to underpin its disruption to the European order, NATO states have plenty of material to work with in explaining to their citizens why deterrence is important. In Northeast Asia, North Korea presents such an acute threat, and China such a vast, chronic one, that the need for deterrence is practically self-evident—and extended nuclear deterrence is greatly preferable to the development of nuclear weapons on the part of the allies themselves.

Such arguments should not overreach, of course. The oxygen feeding the nuclear ban treaty is the stalemate in traditional arms control and disarmament, and the defence of extended deterrence should be combined with efforts to move those processes along. This is an easy recommendation to make in general terms, and a difficult one to turn into specifics, given that the fate of the Comprehensive Test-Ban Treaty is in the hands of the United States Senate, and crucial support for negotiations on a Fissile-Material Cut-off Treaty to begin must first come from Pakistan and China. Engagement, in the meantime, in such initiatives as the International Partnership for Nuclear Disarmament Verification is welcome, but no game-changer.

Two immediate crises—over North Korea's nuclear programme, and over Russia's violation of the INF Treaty—will generate pressure for the further forward deployment of non-strategic nuclear weapons on allies' territory. Such moves would be counterproductive: ineffective in deterring the adversary, potentially destabilising, and a hindrance to political dialogue. The reasons

to resist them extend far beyond the ban treaty. But in order to manage the divisions that the ban treaty exacerbates, and to maintain extended deterrence while leaving the door open to future progress in disarmament, the umbrella states will need to show restraint.

Apart from these essentially negative recommendations, the umbrella states are left with the uninspiring, but nevertheless important, task of holding the line in anticipation of progress elsewhere. The contribution of states such as Germany to the Open-Ended Working Group shows ways of arguing for the continued necessity of both extended nuclear deterrence and consensus-based approaches to disarmament.

*"...umbrella states should engage more deeply in publicly exploring the conditions necessary for serious nuclear disarmament to take place..."*

Following that example, umbrella states should engage more deeply in publicly exploring the conditions necessary for serious nuclear disarmament to take place — a discussion which should help demonstrate why achieving disarmament is not a simple matter of generating sufficient political will. Here, umbrella states (and others) should draw a contrast with the ban-treaty approach by communicating a clear principle: if nuclear disarmament measures are intended to be legally binding, then they should be verifiable and enforceable. Legally binding measures which are not verifiable and enforceable, after all, hinder only those—such as the umbrella states—that tend to abide by the rule of law.

<sup>27</sup> The term was popularised by Richard Lennane, of the disarmament group Wildfire. See, for example, [http://www.wildfire-v.org/Weasel\\_flyer.pdf](http://www.wildfire-v.org/Weasel_flyer.pdf).

“A window of opportunity exists in which to help mitigate some of the potential longer-term effects of a ban that critics of the treaty have warned of...”

Andrea Berger

# After Adoption: Recommendations for Strengthening the Nuclear Non-Proliferation Treaty

## Andrea Berger

Following the adoption of a treaty prohibiting nuclear weapons, Christopher Ford, the US National Security Council's director for weapons of mass destruction, lambasted the ban as a "step backward" on the road to nuclear disarmament.<sup>1</sup> Many opponents of the treaty agree with his view that the ban represents not only an "ineffective measure", but also a potentially damaging one with respect to safeguards, verification, and the wider Non-Proliferation Treaty regime.<sup>2</sup>

Yet beyond these points of agreement, the treaty's critics begin to diverge in their approach to the ban. Some engaged informally with negotiating parties about the proposed treaty, whilst others wanted no such interaction.<sup>3</sup> Japan, conflicted

by its longstanding support for disarmament and its simultaneous position within a security alliance reliant on nuclear weapons, had periodic and informal interaction with ban proponents while negotiations were taking place. China, for its part, not only had exploratory discussions on participating in the negotiation conference, but has altogether avoided directly criticising the ban.

Beijing's approach also highlighted wider differences over the appropriate tone to adopt towards supporters of the prohibition. Some opponents chose a confrontational style, whilst others preferred a milder approach, conscious of their desire not to contribute to further fracturing the non-proliferation and disarmament community.<sup>4</sup> It is for this reason that when the US Ambassador to the United Nations, Nikki Haley, held a press conference to denounce the proposed prohibition in March 2017, some North Atlantic Treaty Organization (NATO) partners agreed to stand behind her, while others refused.<sup>5</sup>

These differences remain apparent now that a treaty has been negotiated and opened for signature. However, they must be managed if supporters and opponents of a ban are to find a mutually agreeable way to advance NPT-focused initiatives in the years ahead. Ban sceptics should make every effort to coalesce around five points of policy with respect to disarmament and its future within the wider NPT regime. These may

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1 "Briefing on Nuclear Ban Treaty by NSC Senior Director Christopher Ford", Carnegie Endowment for International Peace, Washington DC, 22 August 2017, <<http://carnegieendowment.org/2017/08/22/briefing-on-nuclear-ban-treaty-by-nsc-senior-director-christopher-ford-event-5675>>

2 Ibid.

3 Emil Dall has pointed out the differences in approach between NATO countries, using the Netherlands and Norway as examples. His analysis rightly notes the continued importance of domestic politics in determining how countries – even those sceptical of the ban – posture towards the treaty. See Emil Dall, "A Balancing Act: NATO States and the Nuclear Ban Treaty", Issue Brief, European Leadership Network, July 2017, <<http://www.europeanleadershipnetwork.org/medialibrary/2017/07/31/ec6b54e0/170721%20Nuclear%20Ban%20Treaty%20Issues%20Brief.pdf>>

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4 Interview with a representative of a non-nuclear weapon state critical of the ban, 17 August 2017, Geneva.

5 Michelle Nichols, "U.S, Britain, France, others skip nuclear weapons ban treaty talks", Reuters, 27 March 2017, <<http://www.reuters.com/article/us-nuclear-un/u-s-britain-france-others-skip-nuclear-weapons-ban-treaty-talks-idUSKBN16Y1QI>>

appear controversial now, but are likely to be less contentious as the ban negotiations fade further into the distance. They therefore merit early consideration.

Firstly, opponents of the ban should accept that the treaty exists, that it will probably enter into force in the next several years, and that it will likely be fairly widely ratified amongst the countries that participated in negotiations. In other words, the ban will, at least in principle, be part of the future international legal architecture for disarmament. Opponents should not be expected to accept these eventualities immediately. As statements made by some nuclear weapons states indicate, there is considerable and understandable frustration and concern over both the treaty's existence and its content. Members of the non-proliferation and disarmament community should anticipate that some critics will continue to make sternly-worded condemnations of the treaty in the near-term, laying out their positions on the ban in forums like the General Assembly.

Eventually, however, opponents should take a more pragmatic view of the way ahead, and agree on a moderate tone and posture. Press conferences like the one held by Nikki Haley in March 2017 should be avoided. NATO should refrain from making joint statements or otherwise acting as a bloc in disarmament settings, which would formalize additional lines of division between groups within the NPT community.

This recommendation is not intended to imply that opponents of the treaty should ignore any continuing concerns about the ban, or refrain from acting to mitigate them. Those within nuclear alliances should continue to enhance alliance solidarity, improve assurance measures, and address perceived sources of insecurity whilst avoiding recourse to the type of nuclear expansion that US President Donald Trump has called for.<sup>6</sup>

6 Steve Holland, "Trump wants to make sure U.S. nuclear arsenal at 'top of the pack'", Reuters, 27 February 2017, <http://www.reuters.com/article/us-usa-trump-exclusive/trump-wants-to-make-sure-u-s-nuclear-arsenal-at-top-of-the-pack-idUSKBN1622IF>

Experts participating in the Carnegie Endowment for International Peace's task force on Russia and Ukraine policy, in the Deep Cuts Commission, and in the European Leadership Network – amongst others – have laid out practical suggestions for improving Euro-Atlantic security in this fashion.<sup>7</sup> Heightened tensions between North Korea and the United States have similarly led to a more active discussion on how to responsibly assure Japan and South Korea in the face of Pyongyang's advancing nuclear and missile capabilities. A softer tone towards the ban should not dampen these efforts.

Similarly, critics of the treaty who fear damage to the international safeguards and verification regimes should seek assurances that countries do not intend to undermine existing progress, 'forum shop',<sup>8</sup> or roll back their safeguards commitments, for example. Countries who worry that ban proponents will push for a second International Court of Justice advisory opinion on nuclear weapons, or for the development of customary international law, are right to express

7 "Guiding Principles for a Sustainable U.S. Policy Toward Russia, Ukraine, and Eurasia: Key Judgments from a Joint Task Force", Carnegie Endowment for International Peace, 9 February 2017, <<http://carnegieendowment.org/2017/02/09/guiding-principles-for-sustainable-u.s.-policy-toward-russia-ukraine-and-eurasia-key-judgments-from-joint-task-force-pub-67893>>. See also, "Back from the Brink: Toward Restraint and Dialogue between Russia and the West", Deep Cuts Commission, June 2016, <[http://www.deepcuts.org/images/PDF/Third\\_Report\\_of\\_the\\_Deep\\_Cuts\\_Commission\\_English.pdf](http://www.deepcuts.org/images/PDF/Third_Report_of_the_Deep_Cuts_Commission_English.pdf)>; and, "Ensuring Euro-Atlantic Security", European Leadership Network, 16 February 2017, <[http://www.europeanleadershipnetwork.org/ensuring-euro-atlantic-security\\_4469.html](http://www.europeanleadershipnetwork.org/ensuring-euro-atlantic-security_4469.html)>

8 Adam Mount and Richard Nephew, "A nuclear weapons ban should first do no harm to the NPT", Bulletin of the Atomic Scientists, 7 March 2017, <<http://thebulletin.org/nuclear-weapons-ban-should-first-do-no-harm-npt10599>>

their concerns. Yet they should also carefully evaluate whether it is necessary to reiterate at the outset of every statement that they will never under any circumstances sign the treaty<sup>9</sup> – a choice directed by national legal advisors eager to ensure their status as persistent objectors to the ban is clear.<sup>10</sup> More moderate language integrated later in national statements should be sufficient to communicate persistent objection, especially after months of the type of legalistic statements currently being delivered, and would help improve the atmosphere in disarmament fora.

Secondly, ban critics should work to find a way to reconcile the various long-term disarmament models within the NPT community. Without some agreement on how to talk about the future road to disarmament, and on the conditions necessary to facilitate the elimination of nuclear weapons, deadlock in forums that cover these issues is sure to persist and fester. As Lewis Dunn has argued, ban opponents and supporters alike should “agree on a shared vision of the nuclear future

and build the conditions for its realization”.<sup>11</sup> This is a feasible goal. No states are currently seriously questioning the validity or desirability of the Comprehensive Test Ban Treaty or a proposed Fissile Material (Cutoff) Treaty, simply because of the advent of a ban. Recent meetings of the high-level experts group on fissile materials, for example, do not seem to have been affected by changes in the wider disarmament landscape.<sup>12</sup> Any nuclear risk reduction efforts, arms control measures, or transparency initiatives that arise in the coming years would continue to be welcomed by non-nuclear weapon states alike.

The obstacle to finding a path forward, at least in the near- and medium- term, is theoretical: no construct has been identified for disarmament discussions that is agreeable both to those who have consistently argued that a prohibition should be the first step, and those who are adamant that it should have been the last. Creative thinking is needed to find a common basis for countries to talk about these issues in future. Initiatives like the Japanese-led Group of Eminent Persons for the Substantive Advancement of Nuclear Disarmament<sup>13</sup> could help fill this void.

Third, opponents of the ban should avoid any temptation to let the ban, and anger and divisions caused by it, justify their withdrawal from efforts to advance other arms control and disarmament-focused initiatives. The so-called P5 Process,

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9 “Joint Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom and France Following the Adoption of a Treaty Banning Nuclear Weapons”, United States Mission to the United Nations, 7 July 2017, <<https://usun.state.gov/remarks/7892>>. See also “Conference On Disarmament Holds First Public Plenaries Since The Third And Last Part Of Its 2017 Session Started On 31 July”, United Nations Office at Geneva, 22 August 2017, <[https://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/F91C82B413B3AFFBC125818400270FB4?OpenDocument](https://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/F91C82B413B3AFFBC125818400270FB4?OpenDocument)>. “France endorsed the statement...read out by the United States on behalf of the United States, the United Kingdom and France on the adoption of a treaty banning nuclear weapons...France read out another statement by its Representative in New York...saying the treaty was not binding to France.”

10 Interview with a representative of a nuclear weapons state, Geneva, 17 August 2017.

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11 Comments by Lewis A. Dunn in “Global Perspectives on a Nuclear Weapons Ban Treaty”, Nuclear Threat Initiative, 3 August 2017, <<http://www.nti.org/analysis/atomic-pulse/global-perspectives-nuclear-weapons-ban-treaty/>>

12 Interview with a representative of a non-nuclear weapon state involved in the initiative, Geneva, 17 August 2017.

13 Statement by H.E Ambassador Koro Bessho at the High-Level Meeting to Commemorate and Promote the International Day for the Total Elimination of Nuclear Weapons, 26 September 2017, Permanent Mission of Japan to the United Nations, <[http://www.un.emb-japan.go.jp/itpr\\_en/bessho092617.html](http://www.un.emb-japan.go.jp/itpr_en/bessho092617.html)>

which was set up by the United Kingdom in 2009 to promote further trust- and confidence-building between the recognised nuclear weapon states, should continue to meet. Concerningly, the group did not hold an annual conference in 2017 as it had originally planned.<sup>14</sup> Indeed, it showed few signs of life at all.<sup>15</sup> This should be rectified by reviving earlier P5 meetings strategic stability, for example. Efforts focused on improving strategic stability between the five could be expanded, potentially to include discussions over nuclear 'threat' or 'risk' reduction. Such initiatives may not produce concrete, tangible improvements in arms control or transparency involving the Nuclear Weapons States, at least while wider security relations between these countries remain poor. Yet regularizing such meetings is intrinsically valuable over the longer term, and they ensure ministries from Moscow to Beijing and Washington remain engaged with these important subjects.

Other groups, such as the Non-Proliferation and Disarmament Initiative – comprised of ten NPT members with diverging views on the ban treaty – should heed the same advice. Since the group's creation in 2010, its diversity and consensus-based decision-making has been its strength. Because the NPDI brings together umbrella states with strong disarmament advocates, it acts as an NPT microcosm and thus a forum in which creative ideas related to transparency, arms control, and disarmament can be tested. At least one of its participants has quietly suggested that, in the wake of the ban treaty's adoption, the NPDI refrain from working on these issues; divides on disarmament may now be too difficult

14 These plans were outlined in the group's 2016 statement. See "Joint Statement from the Nuclear Weapons States at the 2016 Washington, DC P5 Conference", US State Department, 15 September 2016. <<https://2009-2017.state.gov/r/pa/prs/ps/2016/09/261994.htm>> It is likely that the ongoing US Nuclear Posture Review contributed to a decline in momentum within the group in 2017.

15 In a divergence from standard practice, the P5 did not make a statement at the 2017 NPT Preparatory Committee.

to bridge, and could irreparably fracture the group if exposed.<sup>16</sup>

Retreating from an area central to the NPDI's mission would be both unnecessary and misguided. Since its creation, the NPDI has promoted initiatives to increase nuclear transparency,<sup>17</sup> and it should continue to do so. After years of dialogue amongst each other and with nuclear possessors, NPDI members know that making progress on this subject is immensely challenging. Yet they also know that these challenges have little to do with a ban, and that enhancing nuclear transparency and accountability remains as important as ever. The NPDI should therefore stand by the declaration it made at the 2017 NPT Preparatory Committee: "differences exist with regard to the ongoing negotiations of a legally binding instrument to prohibit nuclear weapons...They will not, however, affect our undertaking to continue working towards the implementation of the 2010 NPT Action Plan."<sup>18</sup>

Fourthly, opponents should work to find, or at least remain open to, creative initiatives related to arms control and disarmament, which engage both ban supporters and critics. The International Partnership for Nuclear Disarmament Verification (IPNDV), which aims to develop technical solutions for monitoring and verification challenges and to lay a foundation for further nuclear reductions,

16 interviews with an official from an NPDI member, 16 and 17 August 2017, Geneva. Another official of an NPDI country, interviewed on 17 August 2017 in Geneva, remarked that the group faced external pressure to abstain from these issues as well.

17 "Statement of the Third Ministerial Meeting of the Non-Proliferation and Disarmament Initiative," New York, 21 September 2011, <[www.foreignminister.gov.au/releases/2011/kr\\_mr\\_110921a.html](http://www.foreignminister.gov.au/releases/2011/kr_mr_110921a.html)>.

18 "Nonproliferation and Disarmament Initiative Joint Statement to the First Session of the NPT PrepCom", Vienna, 3 May 2017, <[http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom17/statements/3May\\_NPDI.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom17/statements/3May_NPDI.pdf)>



is an excellent example.<sup>19</sup> IPNDV is co-led by the United States and the Nuclear Threat Initiative, and brings together a diverse range of governmental and non-governmental experts. Its practical and technical focus allows participants to put aside higher-level disarmament politics and collaborate. Additional initiatives that create space for NWS-NNWS cooperation in disarmament-, arms control-, or risk-reduction related areas are needed. Non-governmental experts, whether supporters or opponents of the ban, should help generate ideas for new activities with these characteristics.

Finally, states should strive to make progress on all the above before the 2020 NPT Review Conference. A window of opportunity exists in which to help mitigate some of the potential longer-term effects of a ban that critics of the treaty have warned of: an NPT community distracted from meaningful progress on non-proliferation and peaceful uses of nuclear energy; a cascade of further initiatives that disenfranchise and target nuclear weapons states and their treaty allies; and damage to the safeguards and verification regimes. Battening down the hatches, maintaining a confrontational approach to ban proponents, or even slinking into apathy are approaches that may mean these prophecies self-fulfil.

The year 2020 will be the NPT's fiftieth birthday. It will also be its twenty-fifth anniversary of indefinite extension – the year when several countries argued during the 1995 negotiations that the Treaty should be up for renewal.<sup>20</sup> These countries agreed to sign on to a proposal to indefinitely extend the treaty, as long as others (especially nuclear weapons states) pursued additional efforts to strengthen the NPT review process and make progress on 'principles and objectives' for

nuclear disarmament. At the time, Indonesia's Permanent Representative to the United Nations noted that if the nuclear weapon states and others who argued for indefinite extension were not prepared to implement these commitments, others who supported a 25-year period would feel it was a "betrayal".<sup>21</sup>

A second consecutive Review Conference implosion in 2020, on the eve that the Treaty was intended by some to be up for renewal, could make this feeling palpable. It would signal that NPT members' differences over disarmament may be irreconcilable – a signal that they have long sought to avoid. Five steps, taken by critics of the new nuclear weapons ban treaty, could help them avoid it again.

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19 "International Partnership for Nuclear Disarmament Verification", Nuclear Threat Initiative, <<http://www.nti.org/about/projects/international-partnership-nuclear-disarmament-verification/>>

20 One proposal put forth at the time was for the Treaty to be extended for periods of 25 years and renewable on a rolling basis.

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21 Interview with Ambassador Nugroho Wisnumurti, Permanent Representative of Indonesia to the United Nations, in: Susan B. Welsh (1995) Delegate perspectives on the 1995 NPT review and extension conference, *The Nonproliferation Review*, 2:3, 1-24, DOI: 10.1080/10736709508436589, p.6



# Conclusion

## Shatabhisha Shetty

As we approach the 50th anniversary of the signing of the Nuclear Non-Proliferation Treaty (NPT), progress on nuclear arms control and disarmament has stalled. No nuclear arms control negotiations are taking place between any of the nuclear armed states, yet nuclear dangers are growing. 21<sup>st</sup> century geopolitical tensions and great power politics make nuclear arms control and disarmament difficult but all the more necessary.

The ban treaty offers a potential new path to the eventual elimination of these weapons. Yet the contributions to this collection demonstrate why it is unlikely that the treaty will be universally accepted and why it will not be the disarmament panacea that some desperately seek. However, the frustration over the lack of disarmament progress is real. This frustration gave rise to the humanitarian initiative and paved the way for the ban treaty. It demonstrates that tolerance for the slow pace of disarmament has dissipated and the division between those who want to ban nuclear weapons now and those who argue that such calls are dangerous growing wider. Yet the treaty is a symptom not the cause of this division.

In the coming years, the nuclear ban treaty will likely enter into force and become part of the nuclear disarmament landscape. Refusing to engage with the process won't deny it legitimacy. The treaty and other disarmament instruments can co-exist and possibly even reinforce one another. But for this to happen, the opposing sides need to engage with each other and find constructive ways forward. In particular, if states want to ensure that the NPT remains the foremost nuclear disarmament treaty, then tangible progress must be demonstrated through the step-by-step or building-block process. This is not invalidated by the adoption of the nuclear ban treaty. Efforts include reducing nuclear stockpiles, de-alerting weapons on "hair-trigger alert", shifting nuclear doctrines towards sole purpose or no-first-use,

extending the New START agreement, sustaining the INF Treaty, ratifying the Comprehensive Test Ban Treaty (CTBT), commencing negotiations on the Fissile Material Cut-Off Treaty (FMCT) and continuing disarmament verification research.

## Recommendations

From the contributions and the ideas suggested by the authors of this collection a set of recommendations can be distilled which could pave the way for re-focusing attention away from divisive factors and instead bring these opposing camps together.

### All States

- All states should clearly articulate their strong support for the NPT irrespective of whether they support the nuclear ban treaty or not.
- Both treaty proponents and opponents should jointly reaffirm their commitment to achieving the total elimination of nuclear weapons at the UN General Assembly, the NPT Review Conference and its Preparatory Committee meetings, or other appropriate international fora.
- Supporters, sceptics, and opponents should put aside their disagreements over the ban treaty to find new and creative ways to work together on strengthening the nuclear disarmament and non-proliferation regime. Discussions on how these respective approaches can co-exist, and ultimately converge, to break the current stalemate should take place. Initiatives such as the Non-Proliferation and Disarmament Initiative (NPDI) and the Japanese-led Group of Eminent Persons for the Substantive Advancement of Nuclear Disarmament could be useful platforms for these efforts.

### Nuclear Armed States

- Officials from nuclear armed states should strive to build bridges rather than deepen

divides and narrow the gap between themselves and the ban treaty's supporters.

- Nuclear armed states should attempt to use more conciliatory language and tone when discussing the nuclear ban treaty and its proponents.
- Nuclear Weapon States should continue to advance other arms control and disarmament initiatives including through the P5 Process.
- All nuclear armed states could consider participating as observers in treaty meetings as non-signatories to the treaty.
- Nuclear Weapon States should work to meet their NPT disarmament responsibilities and pledges, such as those included in the 2010 NPT Action Plan, through concrete measures. These efforts should reduce the role and number of nuclear weapons and reiterate their commitment towards a world free of nuclear weapons.
- China could use the ban treaty as an opportunity to promote a no-first-use policy with the other nuclear weapon states by co-sponsoring a working paper on no-first-use.
- China, France and Russia can and should play more active roles in disarmament verification and undertake confidence-building measures to help bridge the confidence gap created by technical limitations between nuclear and non-nuclear weapon states.

#### **NATO and nuclear umbrella states**

- NATO needs to decide whether and how it wishes to engage with the nuclear ban treaty.
- It could work to reduce any tensions between its members on the ban treaty through discussions on collective defence approaches that are less reliant on nuclear deterrence.
- Non-NATO nuclear umbrella states with a deterrence guarantee relationship with the United States should consult on how, to what extent, and under what circumstances they could in practice rely less on extended nuclear deterrence.